

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1968

No. 222

CIVIL AERONAUTICS BOARD, PETITIONER.

v.

ARTHUR E. SUMMERSFIELD, POSTMASTER GENERAL OF THE UNITED STATES, AND THE UNITED STATES OF AMERICA, ON BEHALF OF THE POSTMASTER GENERAL.

No. 223

DELTA AIR LINES, INC., PETITIONER.

v.

ARTHUR E. SUMMERSFIELD, POSTMASTER GENERAL OF THE UNITED STATES, AND THE UNITED STATES OF AMERICA, ON BEHALF OF THE POSTMASTER GENERAL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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In the United States Court of Appeals
for the District of Columbia Circuit

No. 11,351

JESSE M. DONALDSON, Postmaster General of the
United States, and THE UNITED STATES OF
AMERICA on behalf of the Postmaster General,
Petitioners,

v.

CIVIL AERONAUTICS BOARD, *Respondent*

Petition for Review of Order of the Civil Aeronautics Board

JOINT APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,351

JESSE M. DONALDSON, Postmaster General of the
United States,

and

THE UNITED STATES OF AMERICA, On Behalf of the
Postmaster General, *Petitioners*,

v.

CIVIL AERONAUTICS BOARD, *Respondent*.

Petition for Judicial Review

To the Honorable, the Judges of the United States Court of Appeals for the District of Columbia Circuit:

JESSE M. DONALDSON, Postmaster General of the United States, and THE UNITED STATES OF AMERICA, on Behalf of the Postmaster General, petitioners, respectfully present this petition for judicial review of orders of respondent, Civil Aeronautics Board, and in support thereof represent and allege the following:

I

THE FACTS AND THE STATUTE UPON WHICH JURISDICTION IS BASED

1. This petition is filed pursuant to Section 1006 of the Civil Aeronautics Act of 1938, 52 Stat. 1024, 49 U.S.C. 646. It seeks review of orders of the Civil Aeronautics Board entered in proceedings under Section 406 of the Act, 49 U.S.C. 486, fixing mail pay for Chicago and Southern Air Lines, Inc. (Docket No. 2564, Orders No. E-5793 and E-6045, dated October 18, 1951, and January 18, 1952, respectively). This petition is filed within 60 days after entry of the Board's order of January 18, 1952, denying the Postmaster General's petition for reconsideration. Section 1006; *Braniff Airways v. Civil Aeronautics Board* (1945), 79 U.S. App. D. C. 341, 147 F. 2d 152.

2. The Postmaster General has a substantial interest in the air mail pay orders sought to be reviewed within the meaning of Section 1006 of the Act. He is a statutory party to all airmail pay proceedings before the Board, Sections 406(a) and 406(c), and as such serves as the protector of the public interest in such proceedings. *Seaboard & Western Air Lines v. Civil Aeronautics Board* (1949), 86 U. S. App. 64, 181 F. 2d 515, 518-519, certiorari denied (1950) 339 U. S. 963. The Postmaster General is required to pay air carriers for transporting air mail, out of funds appropriated by Congress for that purpose, at the rates fixed by the Board. Section 406(a). The Postmaster General participated in the proceedings before the Board in which the orders sought to be reviewed were entered, and there urged the objections raised in this petition.

II

THE NATURE OF THE PROCEEDINGS AS TO WHICH REVIEW IS SOUGHT

1. Chicago and Southern Air Lines, Inc. (C. & S.) is a certificated air carrier conducting both domestic and Latin-American operations. Service over the Latin-American routes was inaugurated November 1, 1946. Temporary airmail pay rates for these foreign operations were fixed by the Board by orders dated March 20, 1947 (7 C.A.B. 985) and May 6, 1948 (9 C.A.B. 924).

2. In July 1948, the Board fixed a final subsidy mail pay rate for C. & S.'s domestic operations effective January 1, 1946. 9 C.A.B. 786. The Board estimated that this rate would yield C. & S. a 7.4% return on its investment allocable to domestic operations. Actual operations under this rate, however, have resulted in an average annual return of 12.51% on domestic operations for the years 1948 to 1950. This is \$654,000 more than a 7.4% rate of return would have provided.¹

¹ On October 1, 1951, the Board reopened the current final mail pay rates for the domestic operations of C. & S. and six other domestic trunkline carriers. Order Serial No. E-5747.

3. On May 18, 1951, the Board issued a show cause order proposing final subsidy rates for C. & S.'s Latin-American operations. These proposed rates were retroactive for the period November 1, 1946, to December 15, 1950, and prospective from December 16, 1950. The Postmaster General filed objections to the proposed rates as excessive. He contended, *inter alia*, that the Board was required to offset the carrier's "excess" earnings on its domestic operations in determining the carrier's subsidy "need" on its foreign routes.

The Board, rejecting this contention, issued its opinion and order on October 18, 1951, fixing final mail pay rates, both retroactive and prospective, for C. & S.'s Latin-American operations.² The Board held that Section 406(b) of the Act did not require it "to reduce the carrier's mail pay with any part of [the carrier's] other revenue if there are sound reasons for not doing so as a matter of economic policy."³ The Board, in fixing the rate, determined that the carrier was entitled to a return of 7% for the past period and 10% for the future.

4. The Postmaster General filed a petition for reconsideration, which the Board denied on January 18, 1952. The administrative remedies of the Postmaster General before the Board have now been exhausted.

III

POINTS ON WHICH PETITIONERS INTEND TO RELY

1. Section 406(b) of the Act compels the Board to offset as "other revenue" the excess earnings of the carrier's domestic operations in determining its "need" for subsidy compensation when fixing mail rates for its international operations. The Board is not empowered to refuse

² The opinion and order were based upon a stipulation of facts entered into by the parties to the Latin-American mail pay proceeding.

³ This principle had been enunciated by the Board four months previously in *Western Air Lines, Inc.—Inland Air Lines, Inc., Mail Rates Case*, Order Serial No. E-5467, June 26, 1951. Petitioners are challenging in this Court the validity of that aspect of the Board's order in the *Western* case. *Donaldson, et al. v. Civil Aeronautics Board*, Docket No. 11,259, petition for review filed December 10, 1951.

to offset such excess earnings for reasons of economic policy or otherwise.

2. By failing to offset the excess earnings from the carrier's domestic operations in fixing rates for its international operations, the Board has fixed a rate which produces compensation in excess of the carrier's "need" as provided in the Act, and has allowed the carrier a rate of return in excess of the rate of return previously found reasonable by the Board.

3. The Board exceeded its statutory power or, in the alternative, abused its discretion in failing to offset C. & S.'s "excess" domestic earnings in fixing airmail pay rates on the carrier's Latin-American routes.

IV

THE RELIEF PRAYED

WHEREFORE, petitioners pray that the Board's order be modified to reduce the payments to C. & S. for the transportation of mail on its Latin-American routes by the amount that such payments fail to reflect the carrier's "excess" earnings on its domestic routes, and for such further relief as the Court may deem proper.

(Signed) H. G. Morison

H. G. MORISON

Assistant Attorney General

Department of Justice

Washington 25, D. C.

(Signed) Roy C. Frank

ROY C. FRANK

Solicitor

Post Office Department

Washington 25, D. C.

(Signed) Arne C. Wiprud

ARNE C. WIPRUD

Associate Solicitor

(Signed) Frederick E. Batrus
FREDERICK E. BATRUS
Assistant Solicitor

(Signed) Eugene J. Brahm
EUGENE J. BRAHM
Chief, Air Mail Section
Office of the Solicitor

Dated March 18, 1952

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E-5385

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Served May 18 1951

Docket No. 2564

CHICAGO AND SOUTHERN AIR LINES, INC.
Latin American Operations

In the matter of the compensation for the transportation of
mail by aircraft, the facilities used and useful
therefor, and the services connected
therewith.

Adopted: May 18, 1951

Statement of Tentative Findings and Conclusions¹

By the Board:

This proceeding was instituted by petition filed October 11, 1946, by Chicago and Southern Air Lines, Inc., herein-after referred to as C & S, for an order fixing and deter-

¹ This statement does not necessarily represent the view of all members with respect to all issues.

mining the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, over its Latin American Route.

Informal mail rate conferences² have been held with C&S in order to evaluate past operating results, claimed mail pay and estimates for a future period as submitted by the carrier.

116 In accordance with Section 302.13 of the Procedural Regulations the Board has arrived at the tentative findings and conclusions and has formulated the tentative mail rates set forth herein. Concurrently, the Board is issuing an order directing C&S to show cause why such tentative mail rates should not be established as the final rates in this proceeding.

CERTIFICATE HISTORY

This route was awarded to C&S by the decision of the Board in the *Latin American Case* on May 17, 1946, approved by the President May 22, 1946.³ The route authorized operations between the co-terminal points, Houston and New Orleans, and Havana; from Havana one leg branched to San Juan by way of Camaguey, Port au Prince and Ciudad Trujillo; a second leg extended from Havana to Caracas by way of Kingston, Aruba and Curacao. In January 1947, service to Montego Bay, Jamaica, as an intermediate point between Havana and Kingston was authorized⁴ and in the *Latin American Route Amendment Case*⁵ in March 1949, Camaguey was eliminated and Kingston instead of Havana was made the branching point of the San Juan and Caracas legs.

² Pursuant to Rule 19 of the Board's Procedural Regulations. These conferences were held on January 10-12, 17-19, and 24-26, 1951.

³ Latin American Air Service, 6 CAB 857, 927 (1946).

⁴ Service to Montego Bay, 7 CAB 741, 747 (1947).

⁵ Pan American Airways, et al., Latin American Route Amendment 10 CAB 351, 380 (1949).

The initial petition of C & S filed on October 11, 1946 requested mail pay at the rate of \$1.73 per airplane mile. A subsequent amendment requested that this be increased to \$2.17. A temporary rate of 95 cents per airplane mile was set on March 20, 1947⁶ for the New Orleans-Havana segment.

On March 30, 1948, C & S filed a new petition requesting a rate of \$1.28 per airplane mile for performing the service between Houston-New Orleans and Caracas via Havana and Kingston, and on May 6, 1948 the Board authorized mail pay at the rate of \$1.25 for this service.⁷ This latter rate has been continued until the present time.

PERIODS FOR WHICH RATES WILL BE FIXED

Service from New Orleans to Havana was inaugurated on November 1, 1946. Service from Houston to Caracas via Havana and Kingston began August 1, 1948. The carrier has never begun operations to Aruba, Curacao and Montego Bay nor from Kingston to San Juan.

Service was begun with 50-passenger DC-4's. Constellation aircraft were introduced on December 16, 1950. This four-engine service was supplemented by DC-3 operations between New Orleans and Houston during the first six months of 1949. DC-3's have been in constant use on this segment since June 1950.

The past period for which mail rates will be fixed will be that from November 1, 1946 through December 15, 118 1950, the time during which the carrier was serving most of its system with DC-4 aircraft. The future period will begin December 16, 1950, the date on which service from New Orleans south was offered with Constellation aircraft.

⁶ Chicago and Southern Air Lines, Inc., Latin American Mail Rates, 7 CAB 985 (1947).

⁷ Chicago and Southern Air Lines, Inc., Latin American Mail Rates, 9 CAB 924 (1948).

MAIL RATES FOR THE PAST PERIOD

Scheduled Service Required

The various changes effected by C&S in the pattern of its service over its international system indicate a proper concern on the part of the carrier to develop to the utmost the traffic potentialities existing on its route. The carrier's experimental efforts in this direction, at least up through June 1949, were rewarded with a continually increasing system passenger load factor. The following table sets forth the quarterly available seat-miles, passenger-miles and load factor attained by the carrier on its international system.

CHICAGO AND SOUTHERN'S INTERNATIONAL SYSTEM
QUARTERLY TRAFFIC DATA UP TO JUNE 30, 1949

| Quarter Ended | Revenue Passenger Miles (000) | Standard Available Seat-Miles* (000) | Revenue Passenger Load Factor (%) |
|------------------|--|---|--|
| March 31, 1947 | 1,773 | 4,819 | 36.79 |
| June 30, 1947 | 1,297 | 5,244 | 24.73 |
| Sept. 30, 1947 | 1,881 | 5,365 | 35.06 |
| Dec. 31, 1947 | 1,747 | 5,305 | 32.93 |
| March 31, 1948 | 1,993 | 5,365 | 37.15 |
| June 30, 1948 | 1,927 | 5,455 | 35.33 |
| Sept. 30, 1948** | 4,158 | 10,680 | 38.93 |
| Dec. 31, 1948 | 5,118 | 13,957 | 36.67 |
| March 31, 1949 | 6,117 | 15,087 | 40.54 |
| June 30, 1949 | 6,954 | 16,276 | 42.73 |

* DC-3 @ 21 available seats; DC-4 @ 44 seats.

** Service to Caracas inaugurated August 1, 1948.

119 During this period, as indicated, the carrier's load factors steadily improved concurrently with an increase in volume of service operated.

This period of load factor improvement accompanying an increase in capacity not only indicates the success of the carrier's experiments with different types of schedule patterns, but also justified in part at least the carrier's further experimentation with its schedules. Unfortunately, after June of 1949, such experimentation did not meet with

an equal degree of success. The following table indicates that continued schedule changes by the carrier resulted in the operation of substantial amounts of excessive capacity, with a corresponding drop in load factor.

CHICAGO & SOUTHERN INTERNATIONAL SYSTEM
QUARTERLY TRAFFIC DATA 1949 AND 1950

| Quarter Ended | Revenue Passenger Miles (000) | Standard Available Seat-Miles* (000) | Revenue Passenger Load Factor (%) |
|---------------|----------------------------------|---|--------------------------------------|
| 3/31/49 | 6,117 | 15,087 | 40.54 |
| 6/30/49 | 6,954 | 16,276 | 42.73 |
| 9/30/49 | 7,832 | 24,220 | 32.34 |
| 12/31/49 | 6,424 | 24,109 | 26.65 |
| 3/31/50 | 7,100 | 23,514 | 30.19 |
| 6/30/50 | 6,882 | 21,294 | 32.32 |
| 9/30/50 | 7,362 | 17,773 | 41.42 |

* DC-3 @ 21 available seats; DC-4 @ 44 seats.

The drop in revenue passenger load factor which occurred in the third quarter of 1949 followed a substantial schedule change effected by the carrier on June 27, 1949, when three weekly round trips were added between Houston and Caracas via New Orleans and Kingston. The resulting pattern of service represented a substantially greater volume of revenue plane miles or available seat miles than that offered by C & S at any time to that date. The carrier claims that this increase in service volume was justified on the grounds that its load factor was steadily increasing up until the end of June 1949, that competitive services of other airlines, both foreign and United States Flag carriers, to and from Caracas were improving steadily during this period and that it had no foreknowledge that Venezuelan air traffic volumes would decline markedly from the end of June 1949 forward.

An examination of the facts indicates that while there is some merit to the carrier's position, no real justification has been established for the 75% increase in capacity scheduled to and from Caracas after June 1949. Although load factors between Kingston and Caracas had increased some eight percentage points from the first to the second

quarter of 1949, the load factor for the latter quarter was only 39.8%, a level which hardly justified a substantial increase in the volume of service rendered. While it appears that competitive services existed for Caracas traffic, it has not been shown that such competition was greatly intensified during the summer of 1949; and C&S's increasing load factor on the Kingston-Caracas segment prior to June 1949 would seem to have augured well for its continuing to obtain a reasonable share of the Caracas traffic. It should be noted, finally, that the carrier is restricted from transporting local traffic between Caracas and Havana by the Venezuelan government except on three weekly round trips, a fact which it knew would limit its loads on the added frequencies.

We have stated in other mail rate cases⁸ our concern over the tendency, on the part of some of the carriers, to add schedules on part or all of their systems without having a reasonable expectation that such greater service vol-

121 umes would result in added revenue greater than added expenses. Such a policy on the part of the carriers can only result in increases in break-even need and need for mail pay support. Similar results are inevitable where, as here, a carrier adds substantial service volume and fails to reduce it after seeing that the anticipated changes in the balance of revenues and expenses have not materialized. Since we do not propose to underwrite such excessive volumes of service with mail pay, nor to encourage management philosophy underlying such operation, we are impelled to disallow for mail rate purposes a substantial amount of the mileage operated by C&S during the past period.

As already noted, the service operated by the carrier was clearly excessive beginning in the third quarter of 1949. Relatively low load factors continued during the next three quarters, but this condition was rectified on May 29, 1950, when the carrier substantially reduced its service volume.⁹

⁸ Capital Airlines, Inc., Mail Rates, 10 C.A.B. 705, 710 (1949).

⁹ The schedule pattern beginning May 29, 1950, totalled 32,494 miles per week, a reduction of 20% from that operated in the average week during the preceding year.

It is therefore during the approximate 11-month period ended May 29, 1950, that the capacity disallowance will be made.

We do not propose to disallow during this period all of the mileage which now, in retrospect, might be termed excessive. To do so, would, in our judgment, be tantamount to charging C&S management with possession of the gift of infallible prophecy, a responsibility which we do not read into the standard of economic and efficient management laid down in Section 406(b) of the Civil Aeronautics Act of 1938, as being required of the carriers in operations to be underwritten with mail pay.

In determining the specific amount of the disallowance, therefore, we propose to recognize a reasonable period during which the mileage operated will be recognized for

mail pay purposes. The purpose of such recognition 122 during this period is to allow C & S an experimental period, during which to test its higher service volume. The most productive schedule pattern operated by the carrier up to June 1950 in terms of load factor and load factor trend was that in effect from December 19, 1948 to June 27, 1949 consisting of approximately one and one-half weekly round trips between Houston and Havana, two and one-half between Houston and New Orleans, nine and one-half between New Orleans and Havana and giving service to Kingston and Caracas of four round trips per week. We find that the mileage operated by the carrier in excess of this schedule pattern during the year following June 1949 could be deemed excessive from the standpoint of load factors, traffic and revenues realized; but that in order to allow for a reasonable period of experimentation, only one-half of such excess will be disallowed for rate-making purposes. In effect, this finding recognizes a period of approximately five and one-half months of the mileage as actually operated, since such operation continued for a total of approximately eleven months.

In view of the fact that on May 29, 1950 the carrier evolved a schedule pattern which reduced by some 20 percent the plane miles operated in the average month during

the preceding year we find that the schedule pattern operated from May 29, 1950 through December 15, 1950 should be recognized in its entirety for mail rate purposes.

The effect of this determination is to disallow 341,000 plane miles operated by C & S up through May 28, 1950 and to recognize the plane mileage operated from that date through December 15, 1950. Appendix No. 1 compares the plane miles, standard available seat-miles, and standard available ton-miles actually operated by the carrier up through December 15, 1950 and that which has been recognized consistent with the above determination.

123 As shown in Appendix No. 1, the 341,000 miles disallowed in the past period approximates 12 percent of that operated by the carrier during the period July 1, 1949 to December 15, 1950, or seven percent of the total plane mileage operated during the entire past period through and including December 15, 1950.

Equipment

During the past period through May 28, 1950 C & S operated most of its schedules on its international system with DC-4 aircraft. In this operation the carrier averaged during the period approximately 7.6 hours per day utilization with such equipment. From May 29, 1950 through December 15, 1950 the DC-4 aircraft were utilized approximately 8.2 hours per day as well as DC-3 aircraft having a daily utilization of 8.4 hours. Even after the indicated disallowance has been made for excessive scheduling the adjusted utilization of the equipment was reasonable. We, therefore, find that the aircraft assigned to the carrier's international division were used and useful and will be recognized in their entirety for rate-making purposes.

Operating Results

While the break-even need level of C&S on a unit basis has, since the beginning of its operations, compared unfavorably with that of other carriers having similar type operations or operating in the Latin American area, the trend

in C & S's break-even need was steadily downward through June 1949. Beginning with the year ended December 31, 1949, however, and for each annual period ended with subsequent quarters C & S's break-even need trend on a unit basis was steadily increasing. This trend is shown in the following table:

| Year Ended | Per Revenue Ton-Mile | Per Standard Available Ton-Mile* |
|------------|--------------------------|--|
| | Reported Break-Even Need | |
| 12/31/48 | 40.51¢ | 13.55¢ |
| 3/31/49 | 36.45 | 12.58 |
| 6/30/49 | 30.83 | 11.08 |
| 9/30/49 | 30.58 | 10.32 |
| 12/31/49 | 33.69 | 10.49 |
| 3/31/50 | 36.40 | 10.84 |
| 6/30/50 | 39.74 | 11.48 |
| 9/30/50 | 36.82 | 11.58 |

* DC-3 @ 2.4 tons; DC-4 @ 6 tons.

The relatively high level of the carrier's break-even need is in large part due to the very low traffic potential on its international system particularly that south of Havana. This is shown in Appendix No. 2 which compares the density of C & S's international system with that of seven other carriers and indicates that except for Colonial Airlines and Braniff Airways, C & S's traffic density in terms of revenue ton-miles per route mile per day was the lowest of the entire group.

The fact that the carrier's increasing break-even need after June 1949 was accompanied by relatively low unit operating expenses and declining load factors and yields indicates that revenue factors rather than unduly high operating expenses were responsible. Appendix No. 3 indicates that as the carrier increased its service volume its unit expenses on a comparative basis achieved a very low level, but that in spite of these economies its revenues declined to such an extent that break-even need nevertheless increased.

Revenues

The carrier has substantiated with factual proof its claim that over the entire period of its operations it actively resisted attempts of other carriers to reduce the general level of fares in the Caribbean area. We therefore 125 find that it has been only as a result of C & S's attempt to meet competitive fares where necessary that its unit revenues have been steadily declining during recent years; and that therefore the level of its unit revenue yields was reasonable during the past period.

The only adjustment to operating revenues is the loss which results from the capacity disallowance previously discussed. We find, in view of the relatively constant degree of competition to which the carrier's traffic was subject, that the load factor attained by it for the year ended June 1949 (prior to the addition of the capacity found to be excessive) was a load factor reasonably attainable during the subsequent year at the same service volume. We have therefore estimated the passenger-mile volume which would have obtained without the addition of the excessive capacity during the year ended June 30, 1950, by applying the prior year's load factor to the capacity operated as of June 1949. The passenger-mile volume carried in excess of that amount is estimated as the volume which would have been lost had the excess capacity not been operated. Adjustments to reported volumes, not only of passenger-miles, but also of freight and excess baggage, are shown in Appendix No. 1.

Passenger, freight and excess baggage revenues during the past period have been reduced by \$133,000, reducing non-mail revenue from \$6,012,000, as reported by the carrier, to \$5,879,000, (Appendix No. 4) which reflects the adjustment outlined above.

Expense Adjustment for Excess Capacity

Appendix No. 4 sets forth the adjustments which have been made to the reported expense figures of C & S. The disallowance of 341,000 plane miles previously indicated

as the excessive plane miles operated during the year 126 ended June 30, 1950 requires a reduction in the carrier's expenses. The reduction in expense in the flying operations and in the direct maintenance categories totals \$209,000 and was determined on the basis of the reported expense per revenue plane mile in these categories for the year ended June 30, 1950. The adjustment required in depreciation expense and in ground and indirect maintenance expense totals \$31,000 and was determined on the basis of the change in allocation of these expenses to the international operation. Ground operations expense as reported was reduced by \$8,000 on the basis of arrivals and departures. Passenger service expense as reported was reduced by \$15,000 on the basis of the cost per passenger-mile for the year ended June 30, 1950. Selling expenses, including traffic and sales, advertising and publicity, were reduced by \$24,000 from the reported figure for the year ended June 30, 1950 on the basis of the percentage by which non-U. S. mail revenues had been reduced from the reported figures for that year. General and administrative expense was reduced by \$26,000, the adjusted figure estimated at 8.92 percent of total adjustments excluding general and administrative expense.

The total of these expense adjustments attributable directly to the elimination of excessive capacity totalled \$313,000. As shown in Appendix No. 4, pages 2 and 3, the net adjustment to recorded break-even need resulting from the elimination of excessive capacity results in a net decrease in break-down need of \$180,000 after the revenue adjustments of \$133,000 are subtracted from the adjustments to expense.

Direct Maintenance

The only adjustment required in the direct maintenance account is to provide for amortization of the built-in overhaul for the DC-4 aircraft and engines, and the amortization of actual overhaul expenses. C & S does not 127 have overhaul reserves and has charged overhaul costs to direct maintenance expenses as incurred.

In order to avoid cost fluctuations and in accordance with the built-in overhaul adjustments in the depreciation expense, the carrier's overhaul expenses have been reversed and capitalized and their amortization effected by spreading experienced costs over the overhaul cycle. As a result, direct maintenance expenses have been increased by \$66,000.

Depreciation—Flight Equipment

In the C & S domestic rate opinion of July 1, 1948,¹⁰ the Board recognized and capitalized a high level of DC-4 integration costs with the express condition that for purposes of mail pay determination the carrier's DC-4 depreciation expense be computed on a five-year service life rather than four years which was then considered reasonable for other carriers. C & S has not conformed with this requirement and has been depreciating its DC-4 equipment over less than four-year periods, in some cases at a service life as short as fifteen months. In accordance with our previous domestic opinion, adjustments amounting to \$425,000 are made to reflect a service life of five years and ten percent residual value.

The elimination of the built-in overhaul from the depreciable cost of DC-4 aircraft, in accordance with the Board's previous opinions on this matter, results in a decrease in depreciation expenses amounting to \$85,000 for the hulls and \$30,000 for the engines, raising the total adjustment to depreciation expenses to \$540,000.

Allocation Between Domestic and International Services

In the carrier's domestic mail rate proceeding, the revised allocation of certain common expenses between domestic and international operations, which had been effected by the carrier on January 1, 1948, was applied from the beginning of international operations on November 1, 1946.¹¹ The corresponding adjustments in

¹⁰ Chicago and Southern Air Lines, Inc., Mail Rates, 9 CAB 786, 798 (1948).

¹¹ *Supra*, Note 10.

international operating results for the period from November 1, 1946 to December 31, 1947 are: an increase of \$19,000 in ground and indirect maintenance, an equivalent decrease in advertising and publicity expense and an increase of \$33,000 in general and administrative expense.

DC-4 Integration Costs

Amortization of DC-4 developmental and training costs over a five-year period, which was provided for in the domestic mail rate proceeding, has similarly been recognized. System amortization charges were allocated to international operations in proportion to adjusted depreciation expenses. In view of the sale and retirement of the carrier's DC-4's in the latter half of 1950, amortization was accelerated in the last quarter of 1950 to absorb the remaining balance of integration costs. The amount of \$114,000 claimed by the carrier has been adjusted to eliminate charges prior to the beginning of international operations on November 1, 1946, resulting in a total allowance of \$111,000 for the review period.

Amortization of Preoperating Expense

Preoperating expenses of \$49,000 incurred by the carrier in preparing for certificated operations after the grant of its route certificate have been examined and found reasonable in nature and amount. Accordingly, their complete amortization in the review period has been allowed.

Nonoperating income and expense

Profit on the sale of the carrier's DC-4 aircraft, which were used in international operations during the review period, has been included as other income to reduce break-even need pursuant to Board policy. The profit 129 has been calculated from the depreciated cost as adjusted to reflect application of the standard five-year life and ten percent residual value for DC-4 equipment, and elimination of "built-in overhaul" from the depreciable cost. The amount of \$19,000 has been allocated as profit to

international operations on the basis of relative depreciation charges to international and domestic operations.

The carrier has claimed \$65,000 for contingent expenses of foreign operations. This has been disallowed in conformance with the Board's established policy that unrealized and purely prospective costs may not be recognized for the purpose of determining mail rates.

Adjusted Break-Even Need

On the basis of the foregoing adjusted total expenses of \$9,001,000 and operating revenues of \$5,879,000, the carrier's break-even need is \$3,122,000 or 67.27 cents per revenue plane mile. This amount is 18.5 percent below the breakeven need of \$3,831,000 claimed by the carrier. After full consideration of the various factors affecting the operations and the break-even need for the period November 1, 1946 to December 15, 1950, we believe that the carrier's revenues and expenses, as herein adjusted, are fair and reasonable for mail pay purposes.

During the past period, 1948-1950, for which the international rate is established herein, the domestic division of C & S was operating under a final mail rate which was made effective January 1, 1948 (*Chicago & Southern Air Lines, Inc., Mail Rates*, 9 C.A.B. 786), and is currently outstanding. Over that period the domestic division earned an average return on investment estimated at 12½ percent. The level of such earnings poses the problem as to whether any portion of the revenues realized by

130 C & S under its domestic mail rate can or should be offset against the need which would otherwise be found to exist in relation to C & S's international operations, with a resulting reduction in the mail pay to be provided for such operation. We have considered the possible offset of such revenues, but we find that policy considerations to which we advert below render such offset inappropriate.

One primary objective of the Act is to further the development of the airline industry to a point where, in general, it will reach a self-sufficient status. From the mail

rate standpoint this goal is best attainable by placing carriers on permanent rates rather than on cost-plus bases for mail payments. *Transcontinental and Western Air, Inc. v. Civil Aeronautics Board*, 336 U. S. 601 (1949). For it is under permanent rates that there exists maximum incentive on the part of carriers to economical and efficient operation. This conclusion follows because, with the realization that they will retain the advantages of good earnings and yet stand any losses which may eventuate thereunder without reimbursement, carriers will, while on closed final rates, bend every effort to keen, economical, and prudent management.

The responsibility of the Board to place carriers on final future rates as rapidly as possible is an exacting one to discharge even where the carrier operates either 131 solely in the domestic or solely in the international area. With regard to carriers comprising both domestic and international divisions, the practical problems presented in any attempt to place both divisions on final rates simultaneously are more difficult because many considerations which enter into the fixing of an international rate are different from those entering into the establishment of a domestic rate. As a practical matter, unless a permanent rate under which the carrier will bear the risks of the future can be fixed for domestic operations, where that course is feasible, without the necessity for determining simultaneously the rate for a companion international division, it may often prove to be impossible to fix any permanent rate for the carrier for an extended period of time. Indeed, if we were to determine that such rates must invariably be established simultaneously, it might well turn out to be impossible in some cases to establish future final rates at any time for carriers comprising both domestic and international divisions. Yet, the fixing of forward final rates which stimulate to the maximum the carrier's incentive to low cost operation and high revenue production cannot be foreclosed to the Board if its statutory responsibilities are to be discharged adequately.

132 The public interest in maintaining and furthering the incentive to carriers generated under forward final rates leads us to the conclusion that at this time, without review of any question of power but simply as a matter of policy, we should not offset the profits of the domestic division of C & S earned under the closed rate in establishing the mail rate for the international operation.

We find, therefore, that the principles of the Act will not be best served now by a policy of application of excess earnings under a past rate, as in the case before us, and, accordingly, that the need of the international division of C & S should not be reduced by offset of any portion of the earnings of its domestic division during the three years in issue. In this connection, of course, it should be borne in mind that although the domestic division retains the earnings experienced while on the unconditional permanent rate fixed for that division, we have it in our power, as does the Postmaster General, to institute a proceeding looking toward decrease of the rate for that division when

it passes the bounds of reasonableness; and the
133 Board has exercised that power in the past.¹²

Simultaneously with the issuance of this statement, we are causing studies to be made by the staff of the earnings of C & S and of other carriers similarly situated to determine whether proceedings should not be instituted looking toward a decrease in their current final domestic mail rates.

Past Period Investment

Investment claimed by the carrier and recognized for the past period has been set forth in Appendix No. 5, together with adjustments required for rate-making purposes. The

134 average investment claimed by C & S from the beginning of international operations to December 31, 1950 amounts to \$1,270,000. This sum does not vary significantly from the investment as herein adjusted, totaling \$1,360,000.

¹² A recent example is the show cause order in Pioneer Air Lines, Inc., Mail Rates, Docket No. 4000, Order Serial No. E-3010, July 14, 1949, which was finalized on September 15, 1950 by Order Serial No. E-4613.

With respect to working capital, the amount of \$508,000 claimed by the carrier has been reduced by \$35,000. In arriving at working capital investment, C&S neglected to consider all working capital components, namely, the pre-payments of \$16,000 and deferred charges of \$2,000 among assets, and deferred credits of \$25,000 and operating reserves of \$6,000 among liabilities. These items when properly included effect a net reduction in working capital of \$13,000. A further reduction of \$22,000 has been made to eliminate excess mail pay from working capital as determined in this order. The resulting recognized working capital of \$473,000 is equivalent to almost three months' adjusted cash operating expenses, a level which indicates a satisfactory financial condition.

The built-in overhaul adjustments and the adjustment of DC-4 depreciation which accrued during the review period result in an average increase in the carrier's investment in flight equipment of \$201,000. This amount comprises: (a) \$183,000 arising from the adjustment of DC-4 depreciation expense to reflect the change in service life from four years and ten percent residual value to five years and ten percent residual value; and (b) \$18,000 conforming to the adjustment of operating expense for built-in overhaul costs.

In accordance with the policy of disallowing investment in equipment purchase funds for rate-making purposes, as set forth in previous cases,¹³ the amount of \$154,000, 135 representing the average amount of advance payments for the purchase of Constellation aircraft, has been removed from investment. During the review period C&S did not use the Constellation aircraft for which these funds were established, and therefore no provision for interest has been made in the past period investment.

Prepayments and deferred charges of a current nature amounting to \$18,000 have been transferred from long-term prepayments to the more appropriate category of working capital as discussed above. Additional amounts of \$25,000

¹³ Braniff Airways Mail Rates, 9 C.A.B. 607, 624 (1948); Pan Am. Airways, Inc., Transatlantic Mail Rates, 8 C.A.B. 267, 285 (1947).

and \$71,000 have been provided herein to reflect the capitalization of preoperating costs and DC-4 integration costs, respectively, in accordance with the amortization of these items allowed in expenses.

After making the foregoing adjustments the investment recognized herein for the past period amounts to \$1,360,000 (Appendix No. 5).

Mail Rate

The break-even need for the review period, as determined on the basis of the foregoing adjustments, is \$3,122,000. In addition to this amount, the fair and reasonable mail rate must include a fair return on recognized investment. It has been the Board's consistent practice to provide a somewhat lower rate of return for past periods than for future periods in view of the fact that for past periods the probability of error in estimates of operating results is removed and operating risks have been realized. Accordingly, a return of seven percent per annum on the recognized investment of \$1,360,000 will be provided in addition to the break-even

need for the review period. This return amounts to 136 \$393,000. The allowance for Federal income taxes of

\$130,000 has been computed by removing revenue adjustments and deducting expense disallowances from net taxable income in accordance with the provisions of recent mail rate decisions of the Board.¹⁴

On the foregoing basis, we find that the fair and reasonable rate for the transportation of mail by aircraft over the carrier's international routes for the period November 1, 1946 through December 15, 1950, is \$3,645,000, which is equal to 78.51 cents per revenue plane mile. The mail pay of \$3,645,000 is inclusive of and not in addition to the mail compensation heretofore received by the carrier for mail transported from November 1, 1946 to December 15, 1950, inclusive.

¹⁴ Colonial Air Lines, Inc., Bermuda Mail Rates, Order Serial No. E-5065 of January 24, 1951.

Western Air Lines, Inc. and Inland Air Lines, Inc., Mail Rates, Order Serial No. E-4870 of November 24, 1950.

MAIL RATES FOR THE PERIOD ON AND
AFTER DECEMBER 16, 1950

Scheduled Service Required

The carrier estimated that 1,679,000 revenue plane miles would be flown during a future year. This estimate is based upon a daily round trip between Houston and New Orleans with DC-3 aircraft which amounts to an annual total of 219,000 revenue miles, and the daily operation of Constellation equipment over the New Orleans-Havana-Kingston-Caracas segment totaling 1,460,000 annual revenue miles.

On December 16, 1950 the carrier initiated the operation of Constellation equipment on its international routes, substituting this aircraft on all its former DC-4 schedules. As we pointed out in the section related to the past period, the traffic on the segments south of Havana did not justify the maintenance of daily service over this portion of the route after a reasonable experimental period. This situation is

aggravated by the use of the larger and more modern 137 equipment which the carrier indicates is necessary for competitive reasons. While we realize that competition is encountered on the Havana-Caracas segment, there appears to be no compelling reason to warrant the recognition of seven weekly round-trips with Constellation aircraft. In particular, the load factors experienced on this segment in the year 1950 in the operation of seven weekly round-trips with DC-4 aircraft, hardly justify continuing these schedules with Constellation equipment.

We find, therefore, that four round trips per week Havana-Kingston-Caracas with Constellation aircraft is a reasonable volume of service on this segment for a future year. The elimination of 413,000 miles applicable to the three additional round trips per week estimated by the carrier results in 1,047,000 revenue miles to be recognized for the Constellation operation. This mileage, added to the 219,000 miles to be flown with DC-3 aircraft, brings the total revenue plane miles to be recognized for a future year to 1,266,000.

On the basis of the revenue miles recognized above and the standard capacities of 21 seats and 2.4 tons for DC-3 aircraft and 52 seats and 8.0 tons for Constellation equipment, the available seat-miles and available ton-miles to be recognized for the future year are 59,043,000 and 8,902,000, respectively (Appendix No. 6).

In view of the competitive routings which exist for passengers traveling from the United States to Kingston and Caracas, it is reasonable to expect that the reduction which we have made in the carrier's service to and from these points will result in a reduction in the carrier's ability to generate traffic. Consequently, the carrier's estimate of 31,100,000 revenue passenger-miles to be carried in the future year has been adjusted to reflect the indicated decrease in the capacity to be recognized. Since we have reduced

the service to be recognized by 3/7ths between Havana and Caracas a reasonable reduction in the passenger traffic estimate for Kingston and Caracas passengers appears to be a decrease of 2/7ths. This estimate of a 2/7ths reduction is necessarily based on judgment since we are unaware of any exact method by which to determine the decline in passenger traffic resulting from a reduction in capacity to be operated. To the extent that the estimated decline is not directly proportional to the curtailment of capacity, it is our view that this is a reasonable estimate since even the recognized capacity after reduction exceeds what might be termed a minimum pattern of service for the Havana-Caracas segment.

The 2/7th reduction in passenger traffic has been applied to all traffic originated or terminated at Kingston and Caracas except for the local Caracas-Havana traffic which can be carried by C&S only on three schedules per week. Applying the 2/7th reduction to the traffic estimated with the single exception noted, we have recognized a decrease of 5,200,000 revenue passenger-miles from the total estimated by the carrier for a future year. This results in a net to be carried by C&S of 25,900,000 revenue passenger-miles and results in a passenger load factor for the future year

of approximately 44 percent for the entire international route.

Freight ton-miles have been estimated at 533,000 on the basis of the freight revenue forecast for the future year and the freight yield per ton-mile estimated by the carrier.

Excess baggage ton-miles and foreign mail ton-miles have been estimated by dividing the estimated revenue in each category by the yield per ton-mile experienced during the third quarter of 1950, which results in 90,000 excess baggage ton-miles and 3,000 foreign mail ton-miles.

The U. S. mail ton-miles have been forecast at 23,000 for the future year by applying the average load experienced during the third quarter of 1950 to the estimated miles to be flown.

139 *Non-U. S. Mail Revenues*

The carrier estimates \$2,411,000 in passenger revenues for a future year as set forth in Appendix No. 7. An adjustment of this amount is necessary to reflect the reduction in passenger-miles attributable to the reduced volume of service which has been found adequate to meet the needs of the traffic.

Since the Kingston and Caracas traffic produce higher passenger yields than realized elsewhere on the carrier's route, it is necessary that the traffic be eliminated on these segments at a yield higher than the average passenger yield of 6.77 cents forecast by the carrier. A yield of 7.50 cents per passenger-mile, representing the estimated average yield of the passenger traffic to Venezuela, was used in determining the passenger revenue lost due to reduction in Caracas traffic, and 7.00 cents per passenger-mile was used for the loss of Kingston traffic. The passenger revenue forecast by the carrier has thus been reduced by \$385,000 leaving an adjusted amount of \$1,720,000 or 6.64 cents per passenger-mile.

The excess baggage revenue of \$74,000 estimated by the carrier has been adjusted to \$60,000 in order to retain the relationship to passenger revenue indicated in the carrier's forecast.

The freight revenue forecast by the carrier is \$205,000 or 12 cents per revenue mile. Applying this yield per revenue mile to the revenue miles estimated for the future results in \$152,000 of freight revenue for the future year.

Foreign mail revenue for a future year which was estimated at \$8,000 by the carrier has been revised to \$7,000, based upon the level of other revenues. The estimate of \$19,000 in other non-U.S. mail revenues forecast by the carrier has been accepted as reasonable.

140 *Total Non-U.S. Mail Revenue*

The total non-U.S. mail revenues, which were estimated by the carrier to be \$2,411,000, have been reduced by \$453,000 to reflect the adjustments in the various categories discussed above. Therefore, the adjusted estimate of total non-U.S. mail revenues is \$1,958,000.

Operating Expenses

We have used the adjusted expenses for the year ended June 30, 1950 as the base year for estimating future expenses, and have made allowances for increased costs which became effective in 1950 but were not fully reflected in the base year. The bases for future year estimates have been detailed by account in Appendix No. 7.

In forecasting flying operations expense for a future year, we have applied the carrier's estimated cost of 28.29 cents per DC-3 revenue plane mile to its projected DC-3 mileage, and its estimated cost of 69.05 cents per revenue plane mile of Constellation operation to the adjusted mileage for this operation. Likewise, DC-3 direct maintenance expense represents application of the carrier's cost estimates of 10.04 cents per revenue plane mile. Direct maintenance expenses of Constellation aircraft have been estimated at 35.00 cents per plane mile. Depreciation claimed by C & S has been adjusted to reflect adoption of the standard 7-year life and 10 percent residual value for Constellation equipment in place of the 5-year life proposed by the carrier. These adjustments effect a reduction of \$575,000

in the carrier's estimated aircraft operating expenses and result in a recognized total of \$1,473,000 for a future year.

The carrier's forecast of ground and indirect expenses has been found reasonable after downward adjustments of three expense categories. Passenger service expense,

141 taken at the carrier's unit cost of 0.926 cent per revenue passenger mile, has been reduced to agree with

the adjusted revenue passenger-miles. Traffic and sales and advertising and publicity expense claimed by the carrier has been reduced to an amount aggregating 20 percent of estimated non-U.S. mail revenues, a ratio approximating that established for comparable carriers in recent rate cases; and on the basis of a similar comparison, general and administrative expense has been reduced to an amount representing 10 percent of other cash expenses. These adjustments, totaling \$266,000, result in adjusted ground and indirect expenses of \$1,821,000.

Total operating expense for a future year has thus been found to be \$3,294,000, equivalent to 260.25 cents per revenue plane mile. This is a high level of expense, but represents the summation of costs which have been individually examined and found reasonable, and is 20 percent below the carrier's estimate. As indicated in the foregoing discussion, the high cost is primarily due to the introduction of Constellation aircraft to enable the carrier to maintain its competitive position and to coordinate with Constellation service on its domestic system. The inherently high unit cost of operating this equipment over the international route, with its relatively low traffic density, has been weighed with regard for these factors. The influence of the general rise in material and labor costs being experienced has also been taken into account. After consideration of the particular circumstances of the carrier's situation, the stated amount of its future year operating expenses has been recognized.

Break-Even Need

The adjusted break-even need for the future year based on non-U.S. mail revenues of \$1,958,000 and total expenses of \$3,294,000 is \$1,336,000, equal to \$1.06 per revenue plane mile.

142 *Investment*

The recognized investment allocated to the international operations for the future period is based on the preliminary balance sheet as of December 31, 1950, which has been adjusted to reflect the elimination of amounts not recognized for rate-making purposes. These adjustments have been summarized in Appendix No. 8.

The total future investment claimed by C & S amounts to \$3,044,000. Of this total \$916,000 represents net working capital based upon the carrier's estimate of three months' cash operating expenses. As of December 31, 1950, however, the carrier's working capital allocated to international operations amounted to \$468,000 after the inclusion of \$104,000 representing 26.30 percent of \$397,000 obtained from the sale of two DC-4 aircraft during the first quarter of 1951. The ratio of 26.30 percent which has been used to allocate working capital between domestic and international operations represents the relationship of estimated cash operating expenses for international operations to the total cash operating expenses of the entire C & S system. From the total working capital of \$468,000 we have deducted \$193,000 which is the international portion of the excess mail pay received by C & S during the review period. The net resulting working capital as herein determined for rate purposes amounts to \$275,000.

Since all Constellation equipment is used by C & S on a system basis, the carrier estimates that one-third of the common investment in six Constellation aircraft should be allocated to international operations. This allocation on the basis of revenue plane miles estimated for the future period appears reasonable and is recognized in the future investment. As indicated in Appendix No. 8, the investment in

Constellation equipment, after restoring the book value of the aircraft to the level of December 16, 1950, is 143 \$2,334,000 or one-third of \$7,000,000, the approximate total cost of six Constellations. To this amount is added \$9,000 representing capitalized interest on the equipment purchase funds relative to these aircraft.

Prepaid and deferred items of a current nature, claimed by the carrier as part of its fixed assets have been eliminated and provided for in working capital. Long term operating property prepayments of \$24,000, the same amount reported in 1950, are found reasonable and are so included in future investment. An additional \$83,000 claimed by the carrier for this category of investment does not appear to be adequately supported and is herein disallowed for rate-making purposes. After all adjustments, the net decrease to claimed investment is \$294,000 resulting in recognized investment of \$2,750,000.

Determination of Mail Rates

In accordance with our findings discussed previously herein, we have determined C & S break-even mail pay requirements to be \$1,336,000 equal to \$1.06 per revenue plane mile as forecast. This determination is \$388,000 or 22.51 percent lower than the break-even of \$1,724,000 estimated by the carrier. The acquisition of the Constellation aircraft has expanded the investment base so that application of a ten percent rate of return, which we have consistently considered fair and reasonable for international operations in a future period, produces a return element of \$275,000 equal to 21.72 cents per revenue plane mile. This compares with an average of 8.36 cents per mile recognized in the past period. Provision for federal income taxes at 47 percent results in the amount of \$244,000 equal to 19.27 cents per revenue plane mile. Total mail pay requirements are, therefore, \$1,855,000 or \$1.47 per revenue plane mile flown in scheduled service.

144 The mail pay requirement of C&S for the future is at a higher rate than any of those currently in

effect for other international carriers. It exceeds the requirement of the other carriers by a substantial margin on any of the customary bases of mail pay comparison, such as plane miles, mail ton-miles or as a percentage of total revenue.

As indicated above, this relatively high level of mail pay, brought about by the operation of Constellation aircraft over a route of very low traffic density, is justified by the circumstances peculiar to C&S operation.

The very fact that the rate established for the future period is substantially higher than that found appropriate for the past period necessarily raises the question whether some adjustment of the route pattern and the volume of services provided south of Havana may not be required. We do not imply by this statement that an adjustment in C&S's route south of Havana is required since, in addition to C&S, operations south of Havana are conducted by other American flag carriers as well as foreign air carriers. However, the high level of mail pay for C&S indicates that it may be appropriate to examine the route structure under which international service south of Havana is being provided by the United States carriers in general, for the purpose of determining whether a realignment of routes in that area might result in reducing the dependency upon the United States Government for mail pay support without a corresponding reduction in the quality of such services. Accordingly, while we do not intimate any definite view as to whether such a realignment may or may not be proper, we have instructed the staff to include the Caribbean area for scrutiny along with the present studies of the domestic route structures. If, upon completion of such studies action with regard to such structure appears warranted, we shall then take such action by formal order and proceeding.

145 C & S has requested a mail rate formula which will provide mail compensation in accordance with our determination on the basis of estimated available seat-miles flown. In view of the carrier's request, we will establish for the period on and after December 16, 1950 a rate which

is calculated to produce the annual amount of mail pay prescribed herein, will be reasonable in terms of the schedule pattern recognized in this opinion, and will change in relation to fluctuations in the volume of service which may be offered.

In order to insure that C & S will receive the amount of mail pay intended by our order, to provide an effective safeguard against overpayment by reason of schedules operated in excess of those found to be required, and finally to distribute mail pay evenly from month to month throughout the year, the recognized available seat-miles over a four-week or twenty-eight day period will be used as a base monthly standard available seat mileage. Accordingly, a base rate of 3.41 cents per standard available seat-mile with a maximum monthly capacity of 4,529,000 standard available seat-miles is found to be the fair and reasonable mail rate for the period on and after December 16, 1950.

CONCLUSION

On the basis of the foregoing considerations, we find that the fair and reasonable rates of compensation to be paid to C & S for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith between the points on its Latin American routes between which the carrier is presently or hereafter may be authorized to transport mail by its certificates of convenience and necessity are as follows:

146 A. For the period November 1, 1946—December 15, 1950, inclusive, the sum of \$3,645,000.¹⁵

¹⁵ This amount is equivalent to a rate of 78.51 cents per recognized revenue plane mile flown in scheduled service over the international system. For administrative purposes, the breakdown of mail compensation by periods is as follows:

| | |
|------------------------------------|------------------|
| November 1, 1946—December 31, 1946 | 152,000 |
| January 1, 1947—June 30, 1947 | 291,584 |
| July 1, 1947—December 31, 1947 | 296,416 |
| January 1, 1948—June 30, 1948 | 358,032 |
| July 1, 1948—December 31, 1948 | 361,968 |
| January 1, 1949—June 30, 1949 | 539,032 |
| July 1, 1949—December 31, 1949 | 547,968 |
| January 1, 1950—June 30, 1950 | 544,488 |
| July 1, 1950—December 15, 1950 | 553,512 |
| Total | 3,645,000 |

B. For the period on and after December 16, 1950:

For each calendar month an effective rate per designated mile flown obtained by dividing by the designated miles flown during the month the product of 3.41 cents times the lower of 4,529,000 or the standard available seat-miles flown in scheduled passenger service during the month. For the period from December 16, 1950 to December 31, 1950, the mail rate shall be derived by dividing by the designated miles flown therein the product of 3.41 cents times the lower of 2,264,500 or the standard available seat-miles flown in scheduled passenger service during the period.

The available seat miles flown in scheduled passenger service during the month shall be computed by multiplying the scheduled mileage flown in passenger service during the month with each aircraft type by the standard available seats for that type as specified below:

| Aircraft Type | Seats |
|---------------|-------|
| DC-3 | 21 |
| DC-4 | 44 |
| Constellation | 52 |

The aforesaid rates per airplane mile shall be applied to, and the designated mileage flown shall be computed on, the direct airport-to-airport mileage between points served for the carriage of mail on each trip flown on a schedule 147 designated or ordered to be established by the Postmaster General for the carriage of mail, and the scheduled mileage flown shall be computed on the direct airport-to-airport mileage between points actually served on each trip flown in scheduled passenger service, including all trips operated as extra sections thereto.

The compensation provided above should be inclusive of, and not in addition to, the mail compensation received by the carrier for the transportation of mail on and after November 1, 1946 over its Latin American routes.

An appropriate order will be entered.

CHICAGO AND SOUTHERN AIR L

Traffic Statistics a
For the Period Novem

| | | |
|--|--|--------------|
| | | 11-1- 6-3 |
| <i>Capacity Operated (000)</i> | | |
| Revenue plane miles | | 2 |
| Available seat-miles—reported | | 96 |
| —standard ² | | 90 |
| Available ton-miles—reported | | 10 |
| —standard ³ | | 12 |
| <i>Capacity Utilized (000)</i> | | |
| Revenue passenger-miles | | 33 |
| Revenue ton-miles: | | |
| Passenger (@ 215 lbs.) | | 3 |
| Freight | | 3 |
| Excess baggage | | 3 |
| Foreign mail | | 3 |
| U. S. mail | | 3 |
| Total | | 4 |
| <i>Load Factors (Percent)</i> | | |
| Passenger—reported | | 3 |
| —standard | | 3 |
| Over-all—reported | | 3 |
| —standard | | 3 |
| Average daily route miles in operation | | 1 |
| Revenue ton miles per route mile per day | | |
| Average daily round trip frequency | | |
| Average daily revenue hours per aircraft | | |
| Performance factor (percent) | | 9 |
| <i>Revenue per Unit of Service (Cents)</i> | | |
| Passenger revenue per rev. pas.-mile | | |
| Revenue per ton-mile: | | |
| Passenger | | 7 |
| Freight | | 3 |
| Excess baggage | | 6 |
| Foreign mail | | 20 |

¹ Scheduled and nonscheduled operations.² Standard capacities: DC-3, 21 seats; DC-4, 44 seats.³ Standard available tons: DC-3, 2.4 tons; DC-4, 6 tons.

Appendix No. 1

NES, INC.—INTERNATIONAL OPERATIONS

Reported and as Adjusted
January 1, 1946—December 15, 1950¹

| | As Reported | | As Adjusted | |
|----|-----------------------|------------------------|-----------------------|------------------------|
| | 7-1-49 to 12-15-50 | 11-1-46 to 12-15-50 | 7-1-49 to 12-15-50 | 11-1-46 to 12-15-50 |
| 72 | 2,912 | 4,984 | 2,571 | 4,643 |
| 16 | 119,917 | 216,333 | — | — |
| 78 | 125,356 | 216,134 | 110,789 | 201,567 |
| 86 | 14,958 | 25,544 | — | — |
| 85 | 17,038 | 29,423 | 15,062 | 27,447 |
| 60 | 40,113 | 73,973 | 38,471 | 72,331 |
| 41 | 4,312 | 7,953 | 4,136 | 7,777 |
| 74 | 804 | 1,178 | 774 | 1,148 |
| 02 | 146 | 248 | 141 | 243 |
| 2 | 8 | 10 | 8 | 10 |
| 12 | 42 | 54 | 42 | 54 |
| 31 | <u>5,312</u> | <u>9,443</u> | <u>5,101</u> | <u>9,232</u> |
| 12 | 33.45 | 34.19 | | |
| 30 | 32.00 | 34.23 | 34.72 | 35.88 |
| 02 | 35.51 | 36.97 | | |
| 35 | 31.18 | 32.07 | 33.87 | 33.64 |
| 47 | 2,321 | 1,627 | 2,321 | 1,627 |
| 40 | 4.29 | 3.85 | 4.12 | 3.77 |
| 85 | 1.18 | 1.02 | 1.04 | .95 |
| 8 | 8.9 | 7.9 | 7.8 | 7.3 |
| 91 | 99.51 | 98.40 | 99.55 | 98.24 |
| 55 | 7.17 | 7.35 | 7.17 | 7.35 |
| 23 | 66.74 | 68.34 | 66.67 | 68.33 |
| 96 | 27.91 | 30.47 | 27.91 | 30.47 |
| 51 | 71.88 | 67.62 | 71.88 | 67.62 |
| 00 | 200.00 | 200.00 | 200.00 | 200.00 |

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Appendix No. 2**CHICAGO AND SOUTHERN AIR LINES, INC.
INTERNATIONAL OPERATIONS****Comparisons of Traffic Density with Other Carriers**

| U. S. Flag International Carrier | Revenue Ton-Mile per Route Mile per Day Year Ended | |
|-------------------------------------|---|----------------|
| | Sept. 30, 1949 | Sept. 30, 1950 |
| Pan American—LAD | 17.4 | 17.8 |
| AAL—Mexico | 14.5 | 15.2 |
| NAL—Havana | 11.4 | 14.8 |
| Panagra | 5.7 | 6.1 |
| EAL—San Juan | 5.7 | 5.9 |
| Chicago and Southern | 4.1 | 4.1 |
| Colonial | 3.3 | 4.7 |
| Caniff | 1.7 | 2.0 |

CE

Conts
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30¢ -

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Appendix No. 3

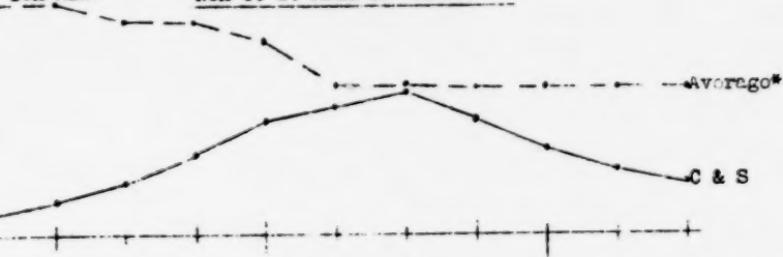
CAIRO AND SOUTHERN AIR LINES, INC. - INTERNATIONAL OPERATIONS

150

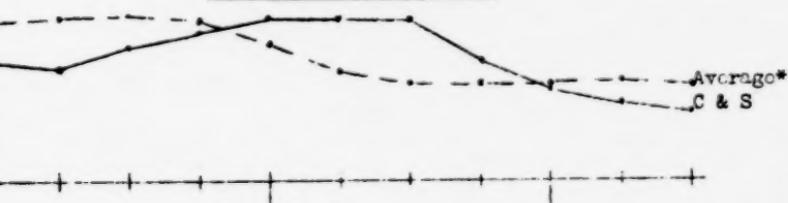
Comparison of Revenues, Expenses and Break-Even Need
 with that of Other U. S. Flag Carriers
 per Standard Available Ton-Mile
 (12-month moving totals)

or
 Ton-Mile

Non-U. S. Mail Revenues**



Operating Expenses**



Break-Even Need**



1-47 3/31 6/30 9/30 12/31 3/31 6/30 9/30 12/31 3/31 6/30
 1948 → 1949 → 1950 →

Arithmetic average of international operations of American, Braniff,
 Colonial, Eastern, National, Panagra and Pan American's Latin American
 Division.

For standard available ton-mile.

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Appendix No. 4

CHICAGO AND SOUTHERN AIR LINES, INC.
INTERNATIONAL OPERATIONSFinancial Results as Claimed and as Adjusted for the Period
November 1, 1946—December 15, 1950
(in thousands)

| | Claimed by the Carrier ¹ | Adjust- ments | As Adjusted Amount | Cents per Rev. Mile |
|---|---|------------------|-----------------------|------------------------|
| Plane miles | 4,984 | -341 | 4,643 | — |
| <i>S. Mail Revenues</i> | | | | |
| Passenger | \$5,435 | \$-120 D | \$5,315 | 114.48 |
| Pass baggage | 168 | -4 D | 164 | 3.53 |
| Pass press | — | — | — | — |
| Pass flight | 359 | -9 D | 350 | 7.54 |
| Pass mail | 20 | — | 20 | .43 |
| Non-U. S. mail | 30 | — | 30 | .65 |
| Total Non-U. S. Mail Revenues | \$6,012 | \$-133 | \$5,879 | 126.63 |
| <i>Operating Expenses</i> | | | | |
| Aircraft operations | \$2,285 | \$-155 D | \$2,130 | 45.88 |
| Direct maintenance—flight equipment | 962 | 12 A D | 974 | 20.98 |
| Depreciation—flight equipment | 1,250 | -562 B D | 688 | 14.82 |
| Total Aircraft Operating Expenses | \$4,497 | \$-705 | \$3,792 | 81.68 |
| Ground operations | \$1,646 | \$ -8 D | \$1,638 | 35.30 |
| Ground and indirect maintenance | 636 | 9 C D | 645 | 13.88 |
| Passenger service | 614 | -15 D | 599 | 12.90 |
| Trade and sales | 1,081 | -43 C D | 1,350 | 29.08 |
| Advertising and publicity | 312 | — | — | — |
| General and administrative | 768 | 7 C D | 775 | 16.69 |
| Depreciation—ground equipment | 79 | — | 79 | 1.71 |
| Total Ground and Indirect Expenses | \$5,136 | \$ -50 | \$5,086 | 109.56 |
| Total Operating Expenses | \$9,633 | \$-755 | \$8,878 | 191.24 |
| Gain sale of DC-4 aircraft ² | \$ — | \$ -19 G | \$ -19 | -0.41 |
| Amortization of DC-4 integration costs | 114 | -3 E | 111 | 2.40 |
| Amortization of preoperating expenses | 49 | — | 49 | 1.06 |
| Net rating income and expenses ² | 47 | -65 F | -18 | -0.39 |
| Even Need | \$3,831 | \$-709 | \$3,122 | 67.27 |

Non-U. S. mail revenues and operating expenses as reported on Form 41 for data for period 7-1-50 to 12-15-50 which were submitted by carrier as special information. Other data as claimed by carrier. Plus sign indicates income.

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*Explanatory Notes***A. Direct Maintenance**

| | |
|---|------------------|
| 1. To eliminate aircraft overhaul expenses | \$-65,908 |
| 2. Allowance for amortization of "built-in" aircraft overhaul | 101,799 |
| 3. Allowance for amortization of "built-in" engine overhaul | 30,129 |
| Total | \$ 66,020 |

B. Depreciation—Flight Equipment

| | |
|---|-------------------|
| 1. Elimination of value of "built-in" overhaul from DC-4 aircraft and engines: | |
| Aircraft | \$-85,195 |
| Engines | -30,459 |
| | \$-115,654 |
| 2. Adjustment of reported DC-4 flight equipment depreciation expense to reflect changes in serv- ice life to 5 years, 10 percent residual value | -424,530 |
| Total | \$-540,184 |

C. Revision in Allocation Bases

To reduce reported domestic operating expenses and increase reported international expenses for the period November 1, 1946 to December 31, 1947. (Order No. E-1740 of 7-1-48) The categories of cost allocations which have been revised are:

| | |
|------------------------------------|-----------------|
| 1. Ground and indirect maintenance | \$ 18,666 |
| 2. Advertising and publicity | -18,666 |
| 3. General and administrative | 32,666 |
| | \$32,666 |

D. Elimination of Estimated Revenue and Expenses Applicable to the Excess Capacity

| | |
|--|------------------|
| 1. Passenger revenue allocated on the basis of passenger-miles and average yield per passenger-mile for the year ended June 30, 1950 | \$120,523 |
| 2. Freight and excess baggage allocated on the basis of relationship to passenger revenue for the year ended June 30, 1950 | 12,800 |
| Total revenue adjustments | \$133,323 |

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| | |
|--|------------|
| 3. Flying operations expense estimated on basis of cost per revenue plane mile for the year ended June 30, 1950 | \$-155,325 |
| 4. Direct maintenance expense estimated on basis of cost per revenue plane mile for the year ended June 30, 1950 | -54,062 |
| 5. Depreciation expense as adjusted for extension of service life. This adjustment reflects only the change in DC-4 depreciation allocated to international operations | -21,508 |
| 6. Ground operations expenses estimated on basis of arrival and departures | -7,879 |
| 7. Ground and indirect maintenance. This adjustment reflects the change in the allocation between domestic and international operations | -10,149 |
| 8. Passenger service estimated on the basis of cost per passenger mile for the year ended June 30, 1950 | -14,939 |
| 9. Traffic, sales, advertising and publicity. Reasonable estimate based on the level of the other adjustments | -24,000 |
| 10. General and administrative expenses. Estimated at 8.92 percent of total adjustments excluding G & A | -25,677 |

Total expense adjustments**\$-313,539**

| | |
|---|--------------------------|
| 11. Net adjustment to break-even need | <u><u>\$-180,216</u></u> |
| <i>E. Integration Costs</i> | |
| International proportion of amortization of DC-4 | |
| integration costs: | |
| Claimed by carrier | \$114,655 |
| Allowed herein | <u>111,332</u> |
| Adjustment | <u><u>\$ -3,323</u></u> |
| <i>F. Nonoperating Income and Expenses</i> | |
| To eliminate provision for foreign operations contingencies | <u><u>\$-65,000</u></u> |
| <i>G. Profit on Sale of DC-4 Aircraft</i> | |
| Profit on sale of DC-4 aircraft allocated to international operations | <u><u>\$-19,000</u></u> |

CHICAGO AND SOUTHERN AIR LINES, INC.
INTERNATIONAL OPERATIONS

Average Investment as Claimed and as Adjusted for the Period
November 1, 1946—December 15, 1950
(in thousands)

| | As Claimed by C & S | Adjust- ments | As Adjusted |
|---|------------------------|------------------|----------------|
| <i>Working Capital</i> | | | |
| Current assets | \$829 | \$-22 A | \$807 |
| Prepayments | — | 16 A | 16 |
| Deferred charges | — | 2 A | 2 |
| Total | \$829 | \$- 4 | \$825 |
| <i>Current liabilities</i> | | | |
| Deferred credits | \$321 | — | \$321 |
| Operating reserves | — | \$ 25 A | 25 |
| Total | \$321 | \$ 31 | \$352 |
| <i>Net working capital</i> | | | |
| | \$508 | \$-35 A | \$473 |
| <i>Operating Property and Equipment</i> | | | |
| Flight equipment—net | 479 | 201 B | 680 |
| Ground property and equipment—net | 70 | — | 70 |
| <i>Other Assets</i> | | | |
| Investments and special funds | 172 | -154 C | 18 |
| Prepaid and deferred items | 41 | -18 D | 23 |
| Capitalized preoperating expenses | — | 25 E | 25 |
| Capitalized DC-4 integration expenses | — | 71 F | 71 |
| Total Investment | \$1,270 | \$ 90 | \$1,360 |

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Explanatory Notes

| | |
|--|-----------|
| A. (1) To include in the computation of average work-capital all prepaid and deferred items of a current nature | |
| Prepayment and deferred charges | \$ 17,845 |
| Deferred credits | -25,118 |
| Operating reserves | -6,453 |
| | \$-13,726 |
| (2) To eliminate 21.71 percent of average international excess mail pay | -21,617 |
| Total | \$-35,343 |
| B. (1) To adjust the reserve for depreciation of DC-4 flight equipment to reflect change in service life | \$182,687 |
| (2) To decrease reserve for depreciation of DC-4 aircraft and engines to conform to built-in overhaul adjustments of reported depreciation expense | |
| Aircraft | \$37,937 |
| Engines | 13,210 |
| | 51,147 |

| | |
|---|-------------------------|
| (3) To adjust for the unamortized balance of capitalized aircraft and engine overhaul expense to conform to overhaul expense adjustments of reported direct maintenance expense | -33,010 |
| Total | <u><u>\$200,824</u></u> |
| C. To exclude equipment purchase funds allocated to international operations | \$-155,750 |
| D. To exclude working capital items (prepayments and deferred charges) from long-term operating property prepayments | \$-17,845 |
| E. Average unamortized balance of capitalized preoperating expenses | <u><u>\$ 24,589</u></u> |
| F. Average unamortized balance of capitalized DC-4 integration expenses | <u><u>\$ 71,229</u></u> |

CHICAGO AND SOUTHERN AIR LINES, INC.
INTERNATIONAL OPERATIONSTraffic Statistics as Estimated by the Carrier and as
Adjusted by the Staff for a Future Year

| <i>Capacity (000)</i> | <i>Carrier's Estimate</i> | <i>As Adjusted Amount</i> | <i>As Adjusted Basis</i> |
|--|---------------------------|---------------------------|--------------------------|
| Revenue plane miles: | | | |
| DC-3 | 219 | 219 | |
| L-649 | 1,460 | 1,047 | |
| | 1,679 | 1,266 | A |
| Available seat-miles—carrier basis | 77,593 ¹ | 0 | |
| Available seat-miles—standard | 80,519 | 59,043 | B |
| Available ton-miles—standard | 12,204 | 8,902 | C |
| <i>Capacity Utilization (000)</i> | | | |
| Revenue passenger-miles | 31,100 | 25,900 | D |
| Revenue ton-miles: | | | |
| Passenger (@ 215 lbs.) | 3,343 | 2,785 | E |
| Freight | 720 | 533 | F |
| Excess baggage | 1112 | 90 | G |
| Foreign mail | 42 | 3 | G |
| U. S. mail | 31 ³ | 23 | H |
| | 4,209 | 3,434 | |
| <i>Load Factors (percent)</i> | | | |
| Passenger—carrier basis | 40.08 | | |
| Passenger—standard basis | 36.28 | 43.87 | |
| Over-all—standard basis | 34.49 | 38.58 | |
| <i>Revenue per Unit of Service (cents)</i> | | | |
| Passenger revenue per revenue pass.-mile | 6.77 | 6.64 | |
| Revenue per ton-mile: | | | |
| Passenger | 62.97 | 61.76 | |
| Freight | 28.50 | 28.50 | |
| Excess baggage | 66.37 | 66.37 | |
| Foreign mail | 226.00 | 226.00 | |

¹ Based upon DC-3, 21 seats and L-649, 50 seats.² Carrier's estimated revenue divided by the yield per ton-mile experienced during the third quarter 1950.³ Experience during ~~Q~~ third quarter 1950 projected to annual basis.

- A. Based upon seven round trips per week Houston-New Orleans with DC-3; seven weekly round trips New Orleans-Havana and four weekly round trips Havana-Kingston-Caracas with L-649.
- B. Based upon 21 seats per DC-3 aircraft and 52 seats per L-649 aircraft.
- C. Standard capacities DC-3, 2.4 tons; L-649, 8 tons.
- D. Revenue passenger-miles estimated by the carrier have been adjusted by reducing the estimated traffic to and from Caracas and Kingston by 2/7 (28.6%) to reflect the 3/7 reduction (from 7 to 4 weekly flights) in scheduled service to be recognized to these two points.
- E. Estimated revenue passenger-miles multiplied by 215 lbs. converted to ton-miles.
- F. Estimated express revenue divided by the yield per ton-mile estimated by the carrier.
- G. Estimated revenue divided by the yield per ton-mile experienced July-September 1950.
- H. Average load experienced during the third quarter 1950 applied to estimated miles.

Appendix No. 7

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159CHICAGO AND SOUTHERN AIR LINES, INC.
INTERNATIONAL OPERATIONSFinancial Results for a Future Year
As Estimated by the Carrier and as Adjusted
(in thousands)

| | Carrier's Estimate | Adjustments | Amount | Adjusted Estimate |
|---------------------------------------|--------------------|---------------|----------------|---------------------|
| | | | | Cents per Rev. Mile |
| Revenue Plane Miles | 1,679 | -413 | 1,266 | — |
| <i>Non-U. S. Mail Revenues</i> | | | | |
| Passenger | \$2,105 | \$-385 | \$1,720 A | 135.90 |
| Excess baggage | 74 | -14 | 60 B | 4.74 |
| Express | — | — | — | — |
| Freight | 205 | -53 | 152 C | 12.01 |
| Foreign mail | 8 | -1 | 7 D | 0.55 |
| Other non-U. S. mail | 19 | — | 19 E | 1.50 |
| Total Non-U. S. Mail Revenues | \$2,411 | \$-453 | \$1,958 | 154.70 |
| <i>Operating Expenses</i> | | | | |
| Flying operations | \$1,070 | \$-285 | \$ 785 F | 62.02 |
| Direct maint.—flight equip. | 532 | -144 | 388 G | 30.66 |
| Depreciation—flight equip. | 446 | -146 | 300 H | 23.70 |
| Total Aircraft Operating Exp. | \$2,048 | \$-575 | \$1,473 | 116.38 |
| Ground operations | \$ 626 | \$ — | \$ 626 E | 49.46 |
| Ground and indirect maintenance | 268 | — | 268 E | 21.17 |
| Passenger service | 288 | -48 | 240 I | 18.96 |
| Traffic and sales | 472 | {-192 | 392 J | 30.97 |
| Advertising and publicity | 112 | — | — | — |
| General and administrative | 296 | -26 | 270 K | 21.33 |
| Depreciation—ground equipment | 25 | — | 25 E | 1.98 |
| Total Ground and Indirect Exp. | \$2,087 | \$-266 | \$1,821 | 143.87 |
| Total Operating Expenses | \$4,135 | \$-841 | \$3,294 | 260.25 |
| <i>Break-Even Need</i> | \$1,724 | \$-388 | \$1,336 | 105.55 |

Explanatory Notes

- A. Estimated revenue passenger-miles times 6.64 cents, estimated average yield per passenger-mile.
- B. Relationship of excess baggage revenue to passenger revenue estimated by carrier.
- C. Estimated revenue ton-miles times 28.50 cents, estimated average yield per freight ton-mile.
- D. Reasonable estimate based on level of other revenue items.
- E. As estimated by Chicago and Southern.
- F. Cost per revenue plane mile estimated by the carrier.
- G. 1. DC-3 based on cost per revenue plane mile estimated by Chicago and Southern.
2. L-649 cost per revenue plane mile estimated at 35.00 cents per mile.
- H. Annual depreciation of two L-649 aircraft.
- I. Cost per passenger-mile estimated by Chicago and Southern.
- J. Estimated at 20 percent of non-U. S. mail revenues.
- K. Estimated at 10 percent of other cash expenses.

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Appendix No. 8

CHICAGO AND SOUTHERN AIR LINES, INC.
INTERNATIONAL OPERATIONSFuture Period Investment
(in thousands)

| | As Claimed by C & S | Adjust- ments | As Adjusted |
|---|------------------------|------------------|----------------|
| <i>Net Working Capital</i> | \$ 916 | \$-641 A | \$ 275 |
| <i>Operating Property and Equipment</i> | | | |
| Flight equipment—net | 1,887 | 456 B | 2,343 |
| Ground property and equipment—net | 74 | — | 74 |
| <i>Other Assets</i> | | | |
| Investments and special funds | 34 | — | 34 |
| Prepaid and deferred items | 26 | -26 C | — |
| Long-term operating property prepayments | 107 | -83 D | 24 |
| Total Investment | \$3,044 | \$-294 | \$2,750 |
| | ===== | ===== | ===== |
| <i>Explanatory Notes</i> | | | |
| A. (1) To reverse carrier's claimed working capital estimate | | | \$-916,000 |
| (2) To provide for net working capital based upon | | | |
| 26.30 percent of preliminary balance sheet | | | |
| data as of December 31, 1950: | | | |
| Current assets | \$928,407 | | |
| Prepayments | 26,752 | | |
| Deferred charges | 4,330 | | |
| Total | \$959,489 | | |
| | ===== | ===== | ===== |
| Current liabilities | \$584,140 | | |
| Operating reserves | 11,835 | | |
| Total | \$595,975 | | |
| | ===== | ===== | ===== |
| Net working capital | | | 363,514 |
| (3) To reduce working capital by 26.30 percent of | | | -192,779 |
| excess mail pay | | | |
| (4) To increase working capital to include receipts from sale | | | |
| of two DC-4 aircraft during the first quarter of 1951 | | | |
| (26.30% of \$397,000) | | | 104,411 |
| Total | | | \$-640,854 |
| | ===== | ===== | ===== |
| B. (1) To add first year accrued depreciation to restore book value | | | |
| of aircraft to the level at the beginning of L-649 opera- | | | |
| tions | | | |
| (2) To provide for the capitalization of interest on equipment | | | |
| purchase funds at the rate of five percent per annum for | | | |
| a period of six months, with one-third of the total allo- | | | |
| cated to international operations | | | |
| Total | | | 9,375 |
| | ===== | ===== | ===== |
| C. To exclude working capital items from "Other Assets" | | | \$-26,321 |
| D. To eliminate unsupported long-term operating property prepay- | | | |
| ments | | | |
| | ===== | ===== | ===== |

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**Orders
Serial Number E-5385**

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
Washington, D. C.

Adopted by the Civil Aeronautics Board at its office in
Washington, D. C. on the 18th day of May, 1951.

Docket No. 2564

In the matter of the compensation for the transportation
of mail by aircraft, the facilities used and useful there-
for, and the services connected therewith, of

CHICAGO AND SOUTHERN AIR LINES, INC.

over its Latin American Route.

Order to Show Cause

The Board having considered all of the information and data set forth, or specifically referred to, in the Statement of Tentative Findings and Conclusions, together with the Appendixes attached thereto, dated May 18, 1951, (hereinafter referred to as the "Statement"), which Statement is attached hereto and made a part hereof, and having on the basis thereof made the tentative findings and conclusions set forth in the Statement;

IT IS ORDERED, That Chicago and Southern Air Lines, Inc. is directed to show cause why the Board should not make final the findings and conclusions set forth in the Statement, and upon the basis thereof fix, determine and publish the rates set forth in said Statement as the fair and reasonable rates of compensation to be paid the carrier for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith over its Latin American routes on and after November 1, 1946;

IT IS FURTHER ORDERED, That all further procedure herein shall be in accordance with Section 302.13 of the Procedural Regulations and that any notice, as provided for in para-

graph (c)(1) of said Section 302.13, that there exists any objection to the rates set forth in the Statement or to the admissibility in evidence of any exhibits accompanying, or to the information specifically referred to in, the Statement shall be filed with the Civil Aeronautics Board within ten days after the date of service of this Order, and if notice is filed as aforesaid, written answer and any supporting documents, as provided for in paragraphs (c)(1) and (c)(2) of said Section 302.13, shall be filed with the Board within thirty days after the date of service of this Order;

IT IS FURTHER ORDERED, That if answer is filed 163 hereto all elements entering into the determination of fair and reasonable rates, except insofar as limited in prehearing conference, shall be in issue, and in such event the final rates shall be determined upon the record made with respect to such issues;

IT IS FURTHER ORDERED, That this order and the attached Statement of Tentative Findings and Conclusions be served upon Chicago and Southern Air Lines, Inc.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN

M. C. Mulligan
Secretary

(SEAL)

• • • • • • • • • •

Served: Oct 18 1951

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket No. 2564

CHICAGO AND SOUTHERN AIR LINES, INC.
LATIN AMERICAN OPERATIONS

In the matter of the compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith.

Decided: October 18, 1951

For policy reasons the Board will not offset the excess earnings realized from Chicago and Southern's domestic operations under a final mail rate against the carrier's "need" for mail pay resulting from operations over its Latin American route.

Provision for Federal income taxes should be based on the actual Federal income tax rate rather than the 38 percent tax rate in force prior to the current national defense emergency.

APPEARANCES:

R. S. Maurer, L. E. Black, and W. C. Stone for Chicago and Southern Air Lines, Inc.

Roy C. Frank and Eugene J. Brahm for the Post Office Department.

Arnold D. Berkeley and Allen C. Lande, Bureau Counsel.

Opinion

BY THE BOARD:

This proceeding involves the determination of final mail rates for the Latin American operations of Chicago and Southern Air Lines, Inc., hereinafter called C&S. In re-

sponse to the petition of the carrier filed on October 11, 1946, we issued a Statement of Tentative Findings and Conclusions on May 18, 1951 (Order Serial No. E-5385),
247 proposing final mail rates for the international operations of C&S for the past period November 1, 1946-December 15, 1950, inclusive, and for the future period beginning December 16, 1950.

C&S has accepted the proposed rates, but the Postmaster General has filed objections and an Answer to the Statement of Tentative Findings and Conclusions. In accordance with the Procedural Regulations the issues raised by the objections have been defined and hearing has been held. The parties have submitted briefs to the Board, and have agreed to waive further procedural steps prior to final decision.

The parties have stipulated that no facts are in controversy and have submitted only two issues involving questions of policy and law for our decision. As expressly limited by agreement of the parties, the two issues are as follows:

1. Whether in fixing mail rates for past and future rate periods involving operations of C&S over its Latin American route, the Board should offset the excess earnings realized by the carrier's domestic routes while operating under a final mail rate.

2. Whether the Board should recognize and apply the actual Federal income tax rate, rather than a 38 percent tax rate, for the purpose of computing the tax allowance in the rates to be established for the Latin American division of C&S.

Since, except as stated above, our findings and conclusions in the Tentative Statement have not been contested as to matters entering into the determination of mail rates for this carrier, resolution of these issues is all that remains necessary for the determination of the fair and reasonable final mail rates.

248 *The Offset of Earnings of the Domestic Routes
Against The "Need" of the Latin American Routes*

During part of the past period involved in this proceeding, namely, 1948-1950, the domestic routes of C&S were operated under final mail rates which yielded the carrier an average rate of return on investment estimated at 12.5 percent. When fixing these mail rates, the Board had estimated a rate of return of 7.4 percent for the carrier from its domestic operations. In undertaking the issuance of a Statement of Tentative Findings and Conclusions for mail rates for C&S' international routes in this case we gave careful consideration to the possible offset of such excess earnings against the "need" resulting from the carrier's international operations. We decided, however, for reasons of economic policy, that no offset should be made.¹ The Postmaster General has objected to this finding, arguing that the "all other revenue" language of section 406(b) of the Act requires that the Board offset the excess earnings from domestic operations under the final rate against the "need" resulting from international operations in establishing rates applicable to both the past and future operations of the international routes. The carrier and the Bureau Counsel maintain that there is no duty of offset, and urge that none be made. In fact, Bureau Counsel questions the Board's power to offset earnings of one segment of an air carrier's operations under an unchallenged final mail rate against the "need" incurred on a different part.

249 After careful consideration of the various contentions of the parties, we conclude that we are not required to make the offset urged by the Postmaster General. Subsequent to the issuance of our Tentative Statement in this proceeding we had occasion in the *Western Air Lines, Inc.-Inland Air Lines, Inc., Mail Rates Case*,² to express an

¹ At the same time we pointed out that we had the power to institute proceedings to reduce rates and that we were having the staff make studies of C&S' earnings to determine whether such proceedings should be instituted. As a result of these studies, we issued an order on October 1, 1951 (Order Serial No. E-5747), reopening the current final mail rates for the domestic operations of C&S and six other domestic trunkline operators.

² Order Serial No. E-5467, adopted June 26, 1951.

opinion on the obligation imposed on us by the Act to consider "other revenue" for the purpose of reducing need in final mail rate proceedings. We there concluded that while we are required to take into consideration the need of a carrier for mail compensation together with "all other revenue", we believe that we are not required by section 406(b) to reduce the carrier's mail pay with any part of such other revenue if there are sound reasons for not doing so as a matter of economic policy. Reappraising that opinion in the light of this case, we consider that the same principle is applicable here in view of the policy considerations which we discuss below.

If an offset policy were adopted, the almost invariable result would be that, as in the instant case, the profits from a carrier's domestic operation would be used to sustain any international operations it might have. Recognizing this likelihood, we hesitate to burden the more robust segment of the industry with the obligations of the economically weaker part. For if the domestic air transport system can be kept financially sound, the public must ultimately benefit, putting aside any consideration of the obvious advantage of reduced rates of mail compensation. Thus, we anticipate that if the carriers' earning position continues strong, reductions in the domestic fare level will be possible, thereby giving impetus to the further development of the 250 industry. In addition, with improved earnings, the domestic operators should be able to benefit the public and themselves with more modern aircraft, and with improved methods affording safer and more efficient operations. We cannot escape the thought that if we allow international operations to be carried on the back of domestic operations, we shall be subjecting the latter to an unjustifiable strain. Many of the domestic operators are well along the road to self-sufficiency. It is our duty to speed them on their way, not thwart them.

It also appears desirable to maintain the comparative status between those domestic operators which have foreign routes as against those which do not have foreign routes.

Since carriers fall into fairly well-defined classes, the Board is enabled to fix uniform domestic mail rates for groups of carriers provided, of course, that their comparative status is preserved by excluding consideration of any international operations. A carrier operating under a class rate has every incentive to operate efficiently because it may retain any profits it earns in excess of the estimated return to be afforded by the uniform rate. It is also administratively desirable to preserve a comparative status between carriers because the Board has been able to analyze the operations of each carrier within a class in the light of the results achieved by others within the same class. The comparison technique of rate-making has proved to be the most satisfactory and practicable available to the Board. If we were required to fix rates for both domestic and international operations at the same time, it would be difficult, if not impossible, to find a suitable basis for a comparison technique of analysis.

251 In view of the foregoing, we find that the earnings from C&S' domestic routes should not be used to offset the "need" resulting from the carrier's international routes. This conclusion stems from considerations of economic policy; we are not deciding the question of our legal power to make such an offset.

The Allowance for Federal Income Taxes

The Postmaster General objects that it is not proper to recognize in the mail rate to be paid by the Government any actual corporate tax rate increase in excess of 38 percent because such an allowance would defeat the basic purposes of the tax increases, namely, to raise the public funds necessary to meet the national defense emergency and to safeguard against further inflationary tendencies. He adds that the carrier, like other citizens, should bear its share of the increased tax burden.

Although the parties have agreed that the tax return technique which we adopted in the *Western-Inland Mail Rates Case* should be employed in this proceeding, the

Postmaster General, who strongly favored such a technique, now wishes to depart from it to the extent that he proposes to recognize only a 38 percent tax rate instead of the higher actual rate of 42 percent during 1950 and 47 percent thereafter. Bureau Counsel and the carrier oppose this contention. Under the Postmaster General's theory a tax allowance would be derived which falls short of meeting the carrier's actual tax liability as reflected on the face of the return. In view of the nature of the tax return technique of making provision for taxes, we cannot accept the Postmaster General's argument.

It is well established that in fixing the rate to be allowed a public utility for a proper income, the Federal income tax must be provided for as an operating charge.

252 The courts have followed this principle and the Board itself has followed it in all of its mail rate decisions. During the period when Federal income tax rates on corporations were gradually raised from 19 percent in 1938 to the 38 percent level prior to 1950, the Board and other regulatory agencies recognized these increases as proper operating charges in determining what rates would constitute a fair return on investment.³

As we indicated in the *Western-Inland Mail Rates Case* the purpose of the tax allowance is to afford the carrier an opportunity to realize the full rate of return which the Board has determined it should properly be granted to meet its statutory needs. Thus, we have determined in this case that the carrier is entitled to a rate of return of 7 percent for the past period and 10 percent for the future period. The Postmaster General has not demonstrated that the rates of return prescribed for C&S and carriers of its class are excessive or unreasonable under current conditions. Yet, if the carrier is taxed at the 47 percent rate, but the allowance for taxes is based on a hypothetical 38 percent rate, as the Postmaster General suggests, C&S will have after taxes a rate of return on investment of

³ Of course, our discussion of the proper Federal income tax allowance does not cover the question of excess profits taxes since they are not in issue here.

only 5.9 percent for past periods and 8.5 percent for future periods rather than the returns which the Board has found to be reasonable.

Finally, another basic flaw in the Postmaster General's argument is that he assumes an increase in corporate taxes will automatically reduce the net income of unregulated enterprises, and, therefore, that it would be unjust to permit air carriers an exemption from this general reduction in corporate net income after taxes. However, there is nothing in the recently enacted price control or tax legislation which indicates a congressional intention to reduce the profits earned either by ordinary corporations or public utilities to a level which falls below a fair and reasonable return.

CONCLUSION

In view of the foregoing, we find that the objections of the Postmaster General to the Statement of Tentative Findings and Conclusions (Order Serial No. E-5385) issued in this proceeding should be denied. However, an adjustment must be made in the rate of mail compensation for the past period. This arises from the fact that the parties have stipulated that the allowance for Federal income taxes of \$130,000 made in the Tentative Statement should be increased to \$147,000. This change results from the application of the tax return technique of determining the proper allowance for Federal income taxes instead of the "hybrid" method which was used by the Board in the Tentative Statement but which has been abandoned since that time.⁴ Accordingly, we reaffirm and hereby adopt our findings in the Statement of Tentative Findings and Conclusions, except with respect to the allowance for Federal income taxes in the past rate period and the issue of offset discussed above.

Therefore, we now find that compensation for the transportation of mail over its international routes

⁴ Adoption of the tax return technique was first announced by the Board in *Western Air Lines, Inc.-Inland Air Lines, Inc., Mail Rates*, Order Serial No. E-5467, adopted June 26, 1951.

by C&S for the period November 1, 1946-December 15, 1950, inclusive, should be fixed at \$3,662,000.

An appropriate order will be entered.

Nyrop, Chairman, Ryan, Lee, Adams, and Gurney, Members of the Board, concurred in the above opinion.

255

Orders

Serial Number E-5793

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 18th day of October, 1951.

Docket No. 2564

In the matter of the compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, of

CHICAGO AND SOUTHERN AIR LINES, INC.
over its Latin American Route.

Order Fixing and Determining the Fair and Reasonable Final Rates of Compensation for the Transportation of Mail by Aircraft

A public hearing having been held in the above-entitled proceeding, and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED, That the fair and reasonable rates of compensation to be paid to Chicago and Southern Air Lines, Inc., for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith between the points on its Latin American routes between which the carrier is presently or hereafter may be authorized to transport mail by its certificates of convenience and necessity are as follows:

1. For the period November 1, 1946-December 15, 1950, inclusive, the sum of \$3,662,000.¹
2. For the period on and after December 16, 1950:

For each calendar month an effective rate per designated mile flown obtained by dividing by the designated miles flown during the month the product of 3.41 cents times the lower of 4,529,000 or the standard available seat-miles flown in scheduled passenger service during the month. For the period from December 16, 1950, to December 31, 1950, the mail rate shall be derived by dividing by the designated miles flown therein the product of 3.41 cents times the lower of 2,264,500 or the standard available seat-miles flown in scheduled passenger service during the period.

256 The available seat miles flown in scheduled passenger service during the month shall be computed by multiplying the scheduled mileage flown in passenger service during the month with each aircraft type by the standard available seats for that type as specified below:

| Aircraft Type | Seats |
|---------------|-------|
| DC-3 | 21 |
| DC-4 | 44 |
| Constellation | 52 |

The aforesaid rates per airplane mile shall be applied to, and the designated mileage flown shall be computed on, the direct airport-to-airport mileage between points served for the carriage of mail on each trip flown on a schedule designated or ordered to be established by the Postmaster General for the carriage of mail, and the scheduled mileage flown shall be computed on the direct airport-to-airport mileage between points actually served on each trip flown in scheduled passenger service, including all trips operated as extra sections thereto.

The compensation provided above shall be inclusive of, and not in addition to, the mail compensation received by the carrier for the transportation of mail on and after November 1, 1946, over its Latin American route.

¹ This amount is equivalent to a rate of 78.87 cents per recognized revenue/plane mile flown in scheduled service over the international system.

IT IS FURTHER ORDERED, That the aforesaid order fixing fair and reasonable rates shall be effective as of this date, all parties to the above-entitled proceeding having already waived all procedural requirements subsequent to hearing short of a final decision of the Board fixing rates herein.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN
M. C. MULLIGAN
Secretary

(Seal)

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BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket No. 2564

In the matter of the compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, of

CHICAGO AND SOUTHERN AIR LINES, INC.
over its Latin American Route.

Petition to Reconsider

TO THE CIVIL AERONAUTICS BOARD:

The Postmaster General, pursuant to Section 302.11 of the Board's Rules of Practice, hereby petitions the Board to reconsider the ruling for mail rate-making purposes which fails to take into account the excess earnings realized by the carrier from its domestic operations when fixing and determining the true subsidy need of the carrier, Chicago and Southern, during the same period of time involved for the Latin American operation of C. & S. The ruling is set forth in the Board's Opinion and Order E-5793, of October 18, 1951, in the above-entitled rate proceeding. The said ruling is challenged herein on the grounds that:

I

The mail rate section (406(b)) of the Civil Aeronautics Act requires the Board to apply the excess earnings of the domestic system—as “other revenue”—when determining the true need of the carrier as a whole for subsidy mail compensation.

II

The Board has failed to consider the Postmaster General's contention that C. & S. has no “need” for additional compensation for its Latin American operations to the extent that C. & S. has received excess earnings from its domestic operations which meets the need requirements of the Latin American operations for the same period of time.

259

III

Excess subsidy should never be deemed to be needed in order to maintain an air transport system on a sound financial basis.

IV

The Board's reason—to enable the Board to provide a uniform class mail rate for groups of carriers—used as a foundation for the rule in question is not supported by actual facts and practices.

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UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C. on
the 18th day of January, 1952.

Docket No. 2564

In the matter of the compensation for the transportation
of mail by aircraft, the facilities used and useful there-
for, and the services connected therewith, of

CHICAGO AND SOUTHERN AIR LINES, INC.
over its Latin American Route.

Order Denying Petition for Reconsideration

The Board having issued on October 18, 1951, an opinion
and order¹ fixing final mail rates for both past and future
periods for the Latin American operations of Chicago and
Southern Air Lines, Inc.;

The Postmaster General of the United States having
filed on November 19, 1951, a petition for reconsideration
of this opinion and order only insofar as the Board decided
not to offset the excess earnings realized by the carrier's
domestic operations against the "need" on its Latin Amer-
ican operations, and the carrier and Bureau Counsel having
filed their respective answers to the petition for re-
consideration in support of the Board's decision;

The Board, upon consideration of the petition of the
Postmaster General, finding that it contains no matter not
previously considered by the Board herein, and that the
matters set forth therein do not warrant the granting of
the relief requested;

¹ Order Serial No. E-5793.

IT IS ORDERED, That the petition for reconsideration of the Postmaster General be, and it hereby is, denied.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN
M. C. Mulligan
Secretary

(SEAL)

• • • • • • • • •

183-A BEFORE THE
CIVIL AERONAUTICS BOARD

Docket No. 2564

In the matter of the compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, of

CHICAGO AND SOUTHERN AIR LINES, INC.
over its Latin American Route.

[Excerpts From] Stipulation and Waiver Respecting Answer of the Postmaster General

WHEREAS the Board has heretofore issued in the above-entitled proceeding an Order directing the parties to show cause why the Board should not adopt the proposed rates set forth in the Statement of Tentative Findings and Conclusions, accompanying the said Order Serial Number E-5385, adopted May 18, 1951, in Docket No. 2564;

AND WHEREAS the Post Office Department having filed a notice of objections to said Order, and its accompanying Statement of Tentative Findings and Conclusions, and an Answer, dated June 14, 1951 filed pursuant to Section 302.13(c) of the Procedural Regulations of the Board, which said Answer objected to the Board's method of computing Federal income taxes for the past and future rate-making periods involved, and also to the Board's refusal to take into account the excess earnings of the domestic division when considering the needs of Chicago and Southern's international division;

183-B AND WHEREAS all of the parties desire to expedite the final disposition of this rate proceeding they have decided to waive certain procedural steps and enter into a stipulation concerning the factual issues raised by the said Answer, leaving the legal and policy issues thereby presented for determination by the Board;

Now THEREFORE this stipulation entered into this 31st day of July, 1951, between the parties in the above-entitled proceeding witnesses that Chicago and Southern Air Lines, Inc., the Post Office Department and Bureau Counsel, do agree and consent, as follows:

183-C (5) That the total earnings, in excess of whatever rate of return on recognized investment shall be adopted as a standard for this purpose by the Board, realized by the domestic division of Chicago and Southern Air Lines, Inc. during the past period commencing January 1, 1948, and extending through December 15, 1950 were as shown in the computations made by the staff, which are attached hereto as Appendix II, and that such computations be made a part of this Stipulation;

183-I

Appendix II**CHICAGO AND SOUTHERN AIR LINES, INC.****Computation of Earnings from Domestic Operations to be Offset in
the Mail Rate for the International Division
Years 1948-1950
(in thousands)**

| | 1948 | 1949 | 1950 | Total |
|--------------------------------|---------|---------|---------|---------|
| Domestic Operating Net Profit: | | | | |
| As reported | \$ 446 | \$ 471 | \$ 470 | \$1,387 |
| Adjustments (see page 2) | 69 | 115 | 31 | 215 |
| Total | \$ 515 | \$ 586 | \$ 501 | \$1,602 |
| | ==== | ==== | ==== | ==== |
| Investment | \$4,150 | \$4,035 | \$4,617 | \$4,267 |
| Rate of Return | 12.41% | 14.52% | 10.85% | 12.51% |
| Earnings Above: | | | | |
| 8 percent | \$ 183 | \$ 263 | \$ 132 | \$ 578 |
| 10 percent | 100 | 182 | 39 | 321 |

183-J

CHICAGO AND SOUTHERN AIR LINES, INC.**Computation of Net Profit Adjustments
Years 1948-1950
(in thousands)**

| | 1948 | 1949 | 1950 | Total |
|--|-------|-------|-------|-------|
| <i>Expense Additions</i> | | | | |
| Adjustment of DC-3 depreciation to reflect change in service life | \$125 | \$ 63 | \$ — | \$188 |
| DC-4 equipment integration costs | 36 | 26 | 37 | 99 |
| Accounting change in allocation of joint expenses due to excess capacity disallow- ance in international operations: | | | | |
| Depreciation | — | — | 21 | 21 |
| Ground Operations | — | — | 8 | 8 |
| Ground and indirect maintenance | — | — | 10 | 10 |
| General and administrative exp. | — | — | 23 | 23 |
| Total | \$161 | \$ 89 | \$ 99 | \$349 |
| <i>Expense Deductions</i> | | | | |
| Adjustment of DC-4 depreciation to reflect changes in service life | \$148 | \$204 | \$103 | \$455 |
| Profit on sale of DC-4 aircraft allocated to domestic system | — | — | 27 | 27 |
| DC-3 depreciation charged by carrier ¹ | 82 | — | — | 82 |
| Total | \$230 | \$204 | \$130 | \$564 |
| <i>Total Adjustment to Reported Net Profit</i> | \$ 69 | \$115 | \$ 31 | \$215 |
| | ==== | ==== | ==== | ==== |

¹ After domestic rate order of July 1, 1948 C&S changed service life of DC-3 aircraft from common retirement date of 6-30-47 to 12-31-48.

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[fol. 67] [File endorsement omitted]

No. 11,351

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, APRIL TERM, 1952

JESSE M. DONALDSON, Postmaster General of the United States, and the United States of America, on behalf of the Postmaster General, Petitioners,

v.

CIVIL AERONAUTICS BOARD, Respondent

Before Stephens, Chief Judge, and Proctor and Fahy, Circuit Judges, in Chambers

ORDER—Filed April 21, 1952

Upon consideration of the motion of Chicago & Southern Air Lines, Inc., a corporation, for leave to intervene as a party respondent in the above-entitled case and it appearing that no objections have been filed thereto, it is

Ordered by the Court that Chicago & Southern Air Lines, Inc., be, and it is hereby, allowed to intervene in the above-entitled case.

Per Curiam.

Dated: April 21, 1952.

[fol. 68] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS, JANUARY TERM, 1953

[Title omitted]

Before Edgerton, Acting Chief Judge, in Chambers

ORDER—Filed February 25, 1953

Upon consideration of the motion of petitioners herein for leave to substitute Arthur E. Summerfield, Postmaster General of the United States as a party to this action on

the ground that Jesse M. Donaldson has resigned from the office of Postmaster General of the United States and that Arthur E. Summerfield, is now lawfully acting as Postmaster General of the United States, and it having been alleged that there is substantial need for continuing and maintaining this action, and it appearing that the respondent has not filed objections thereto, it is

Ordered that the motion be granted and that Arthur E. Summerfield, Postmaster General of the United States, be, and he is hereby, substituted in the place and stead of Jesse M. Donaldson as petitioner.

Dated: February 25, 1953.

[fol. 69] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,351

ARTHUR E. SUMMERFIELD, Postmaster General of the United States, and The United States of America, on behalf of the Postmaster General, Petitioners,

v.

CIVIL AERONAUTICS BOARD, Respondent,
CHICAGO AND SOUTHERN AIR LINES, INC., a Corp., Intervenor
On Petition for Review of Order of the Civil Aeronautics Board

Decided May 4, 1953

Mr. Daniel M. Friedman, Special Assistant to the Attorney General, Department of Justice, *pro hac vice*, by special leave of Court, with whom Mr. Newell A. Clapp, Acting Assistant Attorney General, Department of Justice, was on the brief, for petitioners. Messrs. Charles H. Weston, Chief, Appellate Section of the Antitrust Division, Department of Justice, and William E. Kirk, Jr., Assistant United States Attorney at the time of argument, also entered

appearances in behalf of the petitioners. Mr. H. Graham Morison, Assistant Attorney General at the time the record was filed, also entered an appearance in behalf of the petitioners.

[fol. 70] Mr. O. D. Ozment, Attorney, Civil Aeronautics Board, with whom Mr. John H. Wanner, Acting General Counsel, Civil Aeronautics Board, was on the brief, for respondent. Mr. Emory T. Nunneley, Jr., General Counsel, Civil Aeronautics Board, also entered an appearance in behalf of the respondent.

Mr. William A. Roberts, with whom Messrs. Harold A. Kertz, James E. Wilson and Mrs. Irene Kennedy were on the brief, for the intervenor, Chicago and Southern Air Lines, Inc.

Before Prettyman, Proctor and Bazelon, Circuit Judges

OPINION—Filed May 4, 1953

PROCTOR, Circuit Judge:

This case is before us to review an order of the Civil Aeronautics Board fixing mail pay rates for Chicago and Southern Air Lines' Latin American routes.¹

¹ The pertinent parts of the Civil Aeronautics Act of 1938, §§ 406(a) and (b), 52 Stat. 998, Reorg. Pl. No. IV of 1940, 54 Stat. 1235 (1940), 49 U. S. C. § 486 (1946 ed.), provide as follows:

“Sec. 406. (a) The Board is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft . . . and the rates so fixed and determined shall be paid by the Postmaster General from appropriations for the transportation of mail by aircraft.

“(b) In fixing and determining fair and reasonable rates of compensation under this section, the Board, considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air car-

[fol. 71] In July, 1948, the Board fixed final rates for the carrier's domestic routes. These included a prospective rate commencing January 1, 1948, estimated to yield a net return, after taxes, of 7.4% on the carrier's investment allocable to domestic operations. Actually the average yield for the years 1948 through 1950 was 12.51%, or \$654,000 more than estimated.

Later, October 18, 1951, the Board ordered final mail rates for the carrier's Latin American routes, retroactively from November 1, 1946 to December 15, 1950, and prospectively from December 16, 1950. These rates were estimated to yield a net return of 7% for the past period and 10% for the future. In determining the same the Board refused, for what it termed "sound reasons . . . of economic policy," (J. A. 54), to offset the carrier's excess profits of \$654,000 from its domestic routes against "need" or subsidy requirements for the international operations (J. A. 53). The refusal to make the offset forms the basis of this appeal.

Although the brief filed in behalf of the Board carries an intimation (p. 12) that refusal to offset the carrier's excess domestic profits may be supported under §406(b) [fol. 72] permitting "different rates for . . . different classes

riers or classes of air carriers, and different classes of service. In determining the rate in each case, the Board shall take into consideration, among other factors, the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation [sic] of mail; such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and the need of each such air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service, and the national defense."

of service," findings and conclusions of the Board reveal no such reason. Their action is explained in these words:

"The public interest in maintaining and furthering the incentive to carriers generated under forward final rates leads us to the conclusion that at this time, *without review of any question of power* but simply as a matter of policy, we should not offset the profits of the domestic division of C & S earned under the closed rate in establishing the mail rate for the international operation." [Emphasis added.] (J. A. 21. See also J. A. 53.)

Thus it appears that the Board was initiating a new "incentive" policy without consideration of its authority under the Act to adopt a plan which omitted an offset of the excess profits arising from domestic operations.

The Postmaster General does not question the Board's authority to fix rates separately for different operating divisions of the carrier, but he does insist that the end result of fixing rates for a carrier must not go beyond that point where the total subsidy exceeds the need of the carrier as a whole. We agree with this contention.

In our opinion failure of the Board to make the offset is at variance with the plain meaning of §406(b). That section speaks in terms of a carrier as a single entity; not as divisible units conducting separate operations. This meaning is clearly reflected in the requirement that "In determining the rate [of mail pay] in each case, the Board *shall* take into consideration . . . the need of each such air carrier for compensation . . . to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier"² to meet the declared objectives of the Act. Accordingly, in determining the "need" requirements of Chicago and Southern Air Lines for its Latin American routes the Board must consider "all [fol. 73] other revenue of the air carrier." Admittedly the excess profit of \$654,000 derived from domestic operations is part of that revenue, so refusal of the Board to "take" the item "into consideration" in determining a rate for the

² Emphasis added.

Latin American routes results in allowing the carrier \$654,000 more than its actual need, in disregard of the statutory requirement to keep subsidy allowances within those bounds.

Heretofore the Board has treated an air carrier as "the primary unit around which the national air transportation system was to be developed through the instrumentality of air mail compensation," and the "need" as "that of the air carrier as a whole and not that of any particular geographical division of its operations." *Chicago and Sou. A. L. Mail Rates—Route Nos. 8 and 53*, 3 C. A. B. 161, 190 (1941). This principle was reaffirmed in *Pan Am. Airways, Inc., Alaska Mail Rates*, 6 C. A. B. 61, 67 (1944), wherein the Board denied subsidy mail pay on the Airways' Alaska division because excess earnings from its more profitable divisions greatly exceeded the Alaska division's requirements. Thus we have an established construction of the Act by the Board which should be given weight. *Power Comm'n v. Panhandle Co.*, 337 U. S. 498, 513, 93 L. Ed. 1499, 1509 (1949); *United States v. Amer. Trucking Ass'ns.*, 310 U. S. 534, 549, 84 L. Ed. 1345, 1354 (1940).

We agree with those pronouncements of the Board. We think they correctly indicate the duty of the Board in fixing "fair and reasonable rates of compensation" under §406(b) in each case to "take into consideration, among other factors . . . all other revenue of the air carrier."

Attention is called to our decision in *Summerfield, Postmaster General, et al. v. Civil Aeronautics Board*, Nos. 11259 and 11324. There, in an opinion by Judge Prettyman, we hold that profits derived by Western Airlines, Inc., from sale of an air route certificate with operating equipment cannot be excluded from revenue for the purpose of pro-[fol. 74] viding an industry incentive. We see no essential difference between that case and this.

The order of the Board of October 18, 1951, fixing mail pay for Chicago and Southern Airlines' Latin American operations is set aside and the case remanded with directions to determine and fix the rate in accordance with this opinion.

Reversed.

BAZELON, Circuit Judge, concurring: I add this comment to describe another difficulty stemming from the statutory inadequacies which are discussed in my concurrence this day in *Summerfield, et al. v. Civil Aeronautics Board*, No. 11259, and *Western Air Lines v. Civil Aeronautics Board*, No. 11324.

The Board refused to offset Chicago and Southern Air Lines' \$650,000 excess over anticipated domestic earnings in establishing the mail rate for international operations. It concluded that such refusal would further managerial incentive to low cost operation and high revenue production in the domestic division. This may well be a highly desirable economic objective. But the premise essential to the Board's conclusion is that the domestic excess is directly related to these factors. Neither the Board nor the courts on review can say whether that premise is valid. The statute does not separate need or subsidy payments from compensation for services. Hence it cannot be determined whether all or any part of this domestic excess is attributable to managerial efficiency reflected by low cost operation and high revenue production or to exorbitant subsidy payments included in Chicago and Southern's domestic mail rate. We cannot impute to Congress an intent that the Board should chart its course without such essential information.

[fol. 75] **PRETTYMAN, Circuit Judge**, dissenting: The court holds that in fixing mail pay for transportation in foreign commerce the Board must include as "other revenue" so-called "excess" earnings on domestic operations and must include that figure in its computation of the carrier's need. The court says that failure "to make the offset" is at variance with the plain meaning of the statute.

The court also expresses its understanding that the omission by the Board of the domestic profits from the calculation was for the purpose of establishing a new incentive policy. So the court finds no essential difference between this case and *Summerfield et al. v. Civil Aeronautics Board*, No. 11259, and *Western Air Lines v. Civil Aeronautics Board*, No. 11324, decided today. I agree that the statute does not authorize the Board to make the omission for the purpose of establishing an industry incentive. My reasons for that view are set out in detail in the opinion in the cases

mentioned. But I do not find that problem in the present case. To be sure, the same phrase of the statute—"all other revenue"—is involved in all three cases. But in the present case the problem is the extent to which the classification of rates authorized by the statute goes. When the statute authorizes one rate for foreign carriage and another rate for domestic carriage, does that cleavage go all through the accounts, so that "all other revenue" in the computation of a foreign rate really means all other revenue from the foreign operation? That problem was not in the other cases.

In its tentative findings in the case at bar the Board held that, without passing on any question of its power, it would as a matter of economic policy omit the domestic earnings from the foreign rate calculation. The Postmaster General challenged that action, maintaining that the statute (the "all other revenue" language in Section 406(b)) required the Board to offset the excess domestic earnings against the need resulting from foreign operations in establishing the foreign rates. In its final opinion the Board held [fol. 76] the statute did not so require. But the Board seems not to have rested that conclusion upon a premise that these earnings were not "other revenue" which it must take into consideration, but upon the premise that having taken them into consideration it could for economic reasons omit them from the calculation of the need in the foreign business. The Board then affirmed its former position that it would omit those earnings as a matter of economic policy. It recited several economic reasons why the domestic rates and the foreign rates should be determined separately; for example, that the more robust segment of the industry ought not to be burdened with the obligations of the economically weaker part; and, again, the desirability of preserving a comparative status of domestic carriers. The Board did not consider or decide whether it had power to include these earnings in the computation. It went only so far as to decide that it had power not to include them.

As I analyze the case, it falls into these questions: In fixing different rates for different services, must the Board "take into consideration" the sum total of all the revenue of the carrier from all its services? Or, on the contrary, in such a case does the statutory term "all other revenue" mean only revenue directly related to the service for which

the rate is being fixed; in other words, must the Board omit unrelated earnings from consideration? If the answer to the first question be "yes"—that is, if the Board must take into consideration the sum total of all the earnings of the carrier from all services—may the Board take such earnings into consideration but nevertheless, having considered them, omit them from the calculation of the separate rate?

The statute provides that the Board may fix different rates for different classes of service. Thus the Board clearly had power to fix different rates for international service and for domestic service. The statute provides that in determining the rate "in each case" the Board shall take into [fol. 77] consideration the need of the carrier for compensation sufficient to insure the performance of "such service". Then follows the provision that the Board shall consider the need of the carrier for compensation, "together with all other revenue of the air carrier," to enable the carrier to maintain and continue development.

The Supreme Court held in the *T. W. A.* case¹ that this is a rate-making process. It seems to me that the statute means that in fixing an international rate the Board should determine the amount needed by the carrier to perform that service and to maintain and continue development of that service. The Board should determine what amount the carrier needs, as payment for its international carriage of mail, to meet its foreign expenses and its allocated federal income taxes and receive a fair return on its foreign investment. It seems to me that the Board could require the foreign transportation and the domestic transportation to stand each on its own feet, neither to be supported by the other. When Congress gave the Board power to fix different rates for different classes of service, it meant for the Board to make separate calculations for each service and rate.

In this connection it seems to me that the concept of different rates for different services in carrying the mail has a definite bearing upon the meaning of "take into consideration". When the Board is fixing a particular rate it should

¹ *T. W. A. v. Civil Aeronautics Board*, 336 U. S. 601, 93 L. Ed. 911, 69 S. Ct. 756 (1949).

take into consideration factors related to that rate, and none other. Such is plain sense, a sort of rule of relevancy.

So I reach the conclusion that, when the Board is determining a separate rate for a certain type of mail service, the "all other revenue" which it must "take into consideration" means revenue related to that service for which the rate is being fixed. But, if I am in error in that construction of those statutory terms, I am so convinced of the soundness of a complete separation of this foreign rate from the domestic operation that I would have to agree with the Board that the elastic statutory phrase "take into consideration" is sufficiently flexible to permit the omission of domestic earnings from the foreign calculation, even after such earnings are taken into consideration. It is noteworthy that the statute does not describe need as the remainder after all other revenue is deducted. The statute does not speak of offsets or deductions. The statute is affirmative in its prescription. It speaks of compensation which "together with" all other revenue will enable the carrier, etc. This is language appropriate to a measure of discretion in respect to the particular carrier and to the particular service. It seems to me that the intermingling of foreign and domestic factors in the computation of each separate rate would lead to great confusion and to inaccuracy in the supposedly separate results.

The Board said that the fact that the carrier had earned in its domestic operation \$654,000 more than had been anticipated created another problem, namely the problem whether the domestic rates had been fixed at too high a level. It directed its staff to begin an investigation of those rates. I think that was correct.

I would affirm the order.

[fol. 79] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT, APRIL TERM, 1953

No. 11,351

ARTHUR E. SUMMERFIELD, Postmaster General of the United States, and The United States of America, on Behalf of the Postmaster General, Petitioners,

v.

CIVIL AERONAUTICS BOARD, Respondent,

CHICAGO AND SOUTHERN AIR LINES, INC., a Corp., Intervenor

On Petition for Review of Order of the Civil Aeronautics Board

Before Prettyman, Proctor and Bazelon, Circuit Judges

JUDGMENT AND DECREE—Filed May 4, 1953

This case came on to be heard on the transcript of the record from the Civil Aeronautics Board, and was argued by counsel.

On consideration whereof, it is adjudged and decreed by this Court that the order of the Civil Aeronautics Board on review in this case be, and the same is hereby, reversed and set aside, and that this case be, and it is hereby, remanded to the said Civil Aeronautics Board for further proceedings in accordance with the opinion of this Court.

Per Circuit Judge Proctor.

Dated: May 4, 1953.

Separate concurring opinion by Circuit Judge Bazelon.
Dissenting opinion by Circuit Judge Prettyman.

[fol. 80] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS, APRIL TERM, 1953

[Title omitted]

ORDER—Filed June 30, 1953

Upon consideration of the motion of Delta Air Lines, Inc., for an order substituting Delta Air Lines, Inc., as a party intervenor in the above entitled case in the place of Chicago and Southern Air Lines, Inc., on the ground that Chicago and Southern Air Lines, Inc., was merged with Delta Air Lines, Inc., with Delta Air Lines, Inc., as the surviving corporation, and it appearing that no objections to said motion have been filed, it is

Ordered by the Court that the motion be granted and that Delta Air Lines, Inc., be, and it is hereby, substituted as an intervenor herein in the place and stead of Chicago and Southern Air Lines, Inc.

Dated: June 30, 1953.

Per Curiam.

[fols. 81-82] [File endorsement omitted]

DESIGNATION OF RECORD (Omitted in Printing)

[fol. 83] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 84-86] STIPULATION (Omitted in Printing)

[fols. 87-88] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 222

CIVIL AERONAUTICS BOARD, Petitioner,

vs.

ARTHUR E. SUMMERFIELD, Postmaster General of the United States, and the United States of America, on Behalf of the Postmaster General

ORDER ALLOWING CERTIORARI—Filed October 12, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated for argument with Nos. 223, 224, and 225.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

[fols. 89-90] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 223

DELTA AIR LINES, Inc., Petitioner,

vs.

ARTHUR E. SUMMERFIELD, Postmaster General of the United States, and the United States of America, on Behalf of the Postmaster General

ORDER ALLOWING CERTIORARI—Filed October 12, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Cir-

cuit is granted. The case is consolidated for argument with Nos. 222, 224, and 225.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

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